

In re: Matterhorn Group, Inc.
Case No. 10-39672 (MSM)
United States Bankruptcy Court –Eastern District of California
(Sacramento Division)

**PART 2 of
EXHIBIT 2
TO DECLARATION OF
EMILY P. RICH
IN SUPPORT OF UNIONS' JOINT
MOTION TO WITHDRAW THE
REFERENCE OF DEBTORS'
MOTION TO MODIFY OR REJECT
COLLECTIVE BARGAINING
AGREEMENTS
WITH
THE BAKERY, CONFECTIONERY, TOBACCO
WORKERS AND GRAIN MILLERS' LOCAL NO. 85
AND TEAMSTERS LOCAL 324**

LETTER OF UNDERSTANDING

DRUG AND ALCOHOL POLICY

A. The Employer has always had a strong commitment to provide a safe workplace for its employees and to establish programs promoting high standards of employee health. Consistent with that commitment, the Employer and Union have agreed to this Drug and Alcohol Policy to establish and maintain a safe and productive work environment for all employees. Every employee will be provided a copy of this policy. Complying with it is a condition of employment. This Drug and Alcohol Policy applies to all employees of the Company. Any employee questions regarding the Company's Drug and Alcohol Policy should be directed to Norma Morlock.

B. The buying, selling, transportation, possession, or use of intoxicants, any controlled substances as defined by law, or any "mood-altering" substances while on Company property or vehicles, or during work hours, including meal and rest periods, is prohibited.

C. Reporting for work under the influence of intoxicants, any controlled substance as defined by law, or any "mood-altering" substance is prohibited. An employee is considered to be under the influence if a prohibited substance is present in the body at or beyond the agreed upon threshold limits as provided in Section N. For those prohibited substances not covered by the Department of Transportation Regulations, an employee will be considered to be under the influence if the prohibited substance is present in the body.

D. Employees utilizing any prescribed medication must immediately report this treatment to their supervisor so a determination may be made regarding the effect of the prescribed medication on the employee's ability to safely and properly perform his job.

E. The Employer may require that the employee immediately submit to a blood, urine or Breathalyzer test where:

1. The Employer has reasonable cause to believe that an employee is in violation of this drug and alcohol policy;
2. An employee has incurred an on-the-job injury;
3. An employee is involved in an accident;
4. An employee is otherwise eligible for promotion;
5. Required by federal or state regulations;

6. As part of the Employer's Random Drug Testing Program which applies to all employees and will be administered consistent with the regulations applying to the Employer's truck drivers.

Reasonable cause shall be defined as suspicion based upon observations that the Employer can describe concerning the appearance, unusual behavior, speech, breath odor, body symptoms or paraphernalia of an employee, which are indications of drug use, impairment or intoxication.

F. If a test is requested, employees are required to cooperate including, but not limited to, executing appropriate documentation or forms, appearing for the test at the time and location specified and cooperating with testing personnel. The Employer will compensate employees for actual time required for testing. However, any employee refusing to submit to a required test shall be taken off the clock effective with the time of the Employer's request. If the test results are negative, the employee will be immediately reinstated in his previous position with full back pay provided disciplinary action was not otherwise warranted.

G. Testing shall be done by a laboratory licensed by the State of Oregon, in accordance with standards disseminated by the National Institute of Drug Abuse and Department of Transportation Rules.

H. Reporting of test results shall be handled discreetly between the medical facility or laboratory and the Employer. Results shall be reported to the Employer according to the Department of Transportation Rules.

I. Results of tests performed under this policy will be considered medical records and held confidential to the extent permitted by law.

J. The Employer reserves the right to conduct searches of Company property, lockers, vehicles, or equipment at any time or place. Where the Employer has a reasonable suspicion that an employee is in violation of the Employer's Drug and Alcohol Policy, the Employer may request that the employee submit to a reasonable search.

K. Violation of the Employer's Drug and Alcohol Policy, or refusal to submit to a required test or search, will subject an employee to immediate discharge. This will include providing adulterated, substituted, tampered with or diluted samples, refusing to complete proper documentation and consent forms or similar conduct.

L. Employees who have alcohol or drug problems are required to immediately notify the Employer and the Union. As a limited exception to "K" above, any employee who does so will be immediately placed on a leave of absence without pay in order to enter an alcohol or drug rehabilitation program. Upon satisfactorily completing this program

within forty-five (45) days, the employee will be reinstated to his former position. During the next eighteen (18) to sixty (60) months following reinstatement, the employee consents to be tested for intoxicants, controlled substances, or mood-altering substances at any time, with or without cause. Any subsequent violation of the Employer's Drug and Alcohol Policy shall be grounds for immediate discharge. An employee who seeks help voluntarily as contemplated by this paragraph must do so and inform the Company prior to the random selection for or prior to any cause or circumstance giving rise to the requirement for or the administration of a drug and/or alcohol test covered by this Policy.

M. The Employer reserves the right to test job applicants for controlled substances or mood-altering substances at any time, with or without cause, as the Employer determines appropriate.

N. The National Institute of Drug Abuse and Department of Transportation standards shall be used to determine threshold limits for prohibited substances.

For the Employer:

DELUXE ICE CREAM COMPANY

By: 

Date: 12-4-08

For the Union:

**GENERAL TEAMSTERS LOCAL
UNION NO. 324**

By: 

Date: 11-20-08

LETTER OF UNDERSTANDING

In order for employees covered under the Collective Bargaining Agreement between Teamsters Local 324 and deluxe Ice Cream Company, Palletizers and Packagers Contract, to better understand the layoff and recall provisions of the Contract as it applies to those employees who have lost seniority, it is agreed as follows:

1. A seniority list will be posted on the bulletin board on a monthly basis.
2. While employees on layoff for three (3) months have no seniority, the Employer when hiring in this classification should notify the laid off employees at their last known address of any openings.
3. The laid off employee shall have the obligation to advise the Employer that he/she desires to come back as a new hire.
4. The Employer shall have the absolute right as to which employee to rehire, but will in making such decision consider such things as 1) good work performance, 2) attendance, and 3) compliance with work rules.

It is understood that nothing in this Letter of Understanding changes, alters or diminishes the Employers rights outlined in Article 13 of the Collective Bargaining Agreement.

For the Employer:

DELUXE ICE CREAM COMPANY

By: [Signature]

Date: 12-4-08

For the Union:

**GENERAL TEAMSTERS LOCAL
UNION NO. 324**

By: Cliff Baker

Date: 11-20-08

Preamble

THIS AGREEMENT, made and entered into this First day of September, 2009, between Vitafreze Frozen Confections, Inc., hereinafter referred to as the Employer, and Bakery, Confectionery, Tobacco Workers and Grain Millers' International Union, Local No. 85, hereinafter referred to as the Union.

WITNESSETH:

SECTION 2—CONDITIONS GOVERNING EMPLOYMENT:

A. As used in this Agreement, the masculine gender shall be deemed to include the feminine. It is further understood the Company shall not discriminate against any employee or job applicant because of membership or non-membership in the Union or because of race, color, creed, age, sex, sexual orientation, national origin, religious or political affiliation, or against the disabled and Vietnam era veteran applicants.

B. The Employer, between the months of March through September may hire Seasonal Employees. Company is engaged in a seasonal business. Such seasonal employees shall not be eligible for vacation entitlement, pension contributions or health and dental insurance contributions.

Based on the employees desire to have the Union represent them.

C. It shall be a condition of employment that all of the Employer's employees in the contractual bargaining unit, who are members of the Union in good standing on the effective date of this Agreement, shall remain members in good standing for the term of the Agreement. Those employees in the unit who are not members on the effective date of this Agreement shall become Union members on the 31st day following the effective date of this Agreement and remain good-standing members for the term of the Agreement. All new employees hired after the effective date of this Agreement shall become Union members on the thirty-first (31st) day following the beginning of such employment and remain good-standing members for the duration of this Agreement. The Union shall supply hire-in slips which shall be completed by the Employer upon the hiring of any new employee. The hire-in slip shall contain the employee's name, address, social security number, date of hire, job classification, and rate of pay and shall be forwarded by mail to the Union.

D. The Employer shall pay for all physical examinations of his employees who are required to take same in order to enter or continue in the employ of the Employer.

E. The Employer hereby agrees to check off non-discriminatory Union dues and initiation fee from Union employees' weekly paychecks in accordance with the following:

Based on the employees desire to have the Union represent them

Said check-off shall be authorized in writing by the employee in a form consistent with law. Said check-off forms shall be presented to the Employer by the Union after signature of the employee has been obtained for authorization. The Employer agrees to deduct assessments provided the employee signs a separate authorization card and the Union notifies the Employer in writing of any assessment at least ten (10) days prior to the pay day on which such deduction is to be made.

Deleted: ¶

SECTION 1—JURISDICTION-¶

¶ The parties hereto hereby agree that this Agreement shall cover all working conditions, wages, and hours of employment for working foreperson, maintenance mechanic, juice mixer, rollo operator, cone operator, vitaline operator, corner line operator, freezer person, warehouse worker, general plant worker, packer, head packer, sanitor, and any other position or classification subject to the Jurisdiction of the Union. The Employer recognizes the Union as the sole bargaining agent for all such employees, excluding but not limited to all office, clerical, sales personnel, managers, guards and supervisors as defined under the National Labor Relations Act.¶

Deleted: It is agreed that due to this requirement the number of Seasonal Employees shall not exceed sixty percent (60%) of the total work force.

Deleted: In re-hiring employees for seasonal work, the Company shall retain a list of Seasonal Employees and shall recall them as to the company seasonal needs and training. It is understood that such employees shall have a separate seniority list and shall be recalled by level of training and skills. ¶

The Employer shall incur no personal liability for the payment of any such dues and shall not be liable to the Union until deductions have actually been made from the employees' checks in accordance with the previously signed check-off authorization form.

The amount checked off during any calendar month shall be remitted by means of a bank check made out to the order of the Union and mailed to the business address of the Union no later than the 10th day following the last Friday of that calendar month. Any amount checked off of any employee's paycheck in accordance with this Section shall be noted on the deduction statement given to the employee.

F. Managers Supervisors and Administrative staff are not part of the bargaining unit and therefore are not required to belong to the union.

Supervisors shall not be prevented from doing bargaining unit work in cases of instruction or where lack of sufficient staffing and/or volume of work makes it impracticable under the circumstances to assign bargaining unit employees to perform such work.

Definitions:

There shall be four (4) types of employees as follows:

- a) Employee
- b) Probationary Employee are those employees who have filled a posted full-time position.
- c) Part-time Employee
- d) Seasonal Employee as defined above
- e) New hires after October 15, 2009

SECTION 4—HOURS, OVERTIME AND WORKING REGULATIONS:

A. The normal work week shall consist of forty (40) hours of work, normally consisting of five (5) eight (8) hour days or four (4) ten (10) hour days. It is understood that on frequent occasions during the busy season the work week will be seven (7) consecutive days because of the nature of the Employer's business. The Employer will endeavor to give during the calendar month the equivalent days off.

B. All work over eight (8) hours per day (or ten [10] hours when a four [4] ten [10] hour workweek is in effect) or forty (40) hours per week shall be paid at the rate of time and one-half (1-1/2). However, employees missing any work during the workweek (excluding layoffs) shall not be entitled to daily overtime during that workweek, but shall be paid time and one-half (1-1/2) only for work in excess of forty (40) hours in that week. In computing overtime pay, an employee shall be paid to the nearest one-fourth (1/4th) of an hour. Paid but un-worked time will not be counted toward the calculation of weekly overtime.

C. In compliance with past practice, the Employer will continue to grant fifteen (15)

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Deleted: SECTION 3—SENIORITY RIGHTS:

Deleted: 1. Definition: Seniority is defined as the employee's length of service with the Employer, and it shall be computed from the time of his employment within the bargaining unit.¶

¶ 2. Probationary Employees: An employee is probationary his first one hundred twenty (120) days of actual work. At the end of the one hundred twenty (120) day period, the employee's seniority date shall date back to the original date of hire. A probationary employee shall never be transferred, promoted, retained during work force reductions, or returned to work after layoff in preference over a non-probationary employee.¶

Deleted: Seniority List: A seniority list shall be prepared by the Employer each month, posted on the bulletin board and a copy mailed to the Local Union.¶

Deleted: The principles of seniority shall apply whenever practical in cases of layoffs, rehires, vacation preference, and shift preference of seniority employees, all other qualifications being equal. The Employer shall be the sole judge of employees' qualifications but shall not act arbitrarily or capriciously. It is recognized by all parties that in applying this Article, it is essential that the Employer have the most qualified, available employee for all covered classifications. ¶

¶ 5. Termination of Seniority: An employee's seniority and employment may be terminated for one of the following reasons. For the purpose of this paragraph, compulsory military service will not result in the loss of seniority.¶

¶ A. Discharge for cause;¶

¶ B. Resignation;¶

¶ C. Absence in excess of one (1) year due to on- or off-the-job illness or injury (unless further extended by mutual agreement and if a mutual agreement cannot be reached, the matter may be made the subject of the Grievance Procedure). In case of time lost as a result of an accident or injury recognized by the Worker's Compensation Board as suffered during the course of employment with the Employer, this period shall be extended in accordance with State law;¶

¶ D. Layoff due to lack of work; [1]

minute paid rest periods during the first and second half of each shift.

Overtime will be assigned at managers discretion based on the needs to the business to maintain a production schedule that is needed to meet customer demands.

SECTION 5 – RIGHTS OF THE PARTIES:

A. Unless otherwise expressly restricted by a specific provision of this Agreement, the Employer shall have the sole and exclusive right, at its own discretion, to exercise the following rights, which are not meant to be exclusive:

To direct and manage its business; to determine all selling, pricing, advertising and financial policies and methods, products and schedules of production; to install new machinery, methods, materials, or processes, or change or eliminate existing machinery, methods, materials, or processes; to direct the work force; to hire, assign, promote, transfer and lay off employees; to add or discontinue processes or operations, in whole or in part, temporarily or permanently; to suspend, demote, discipline, or discharge employees for just cause (subject to the Grievance Procedure in Article 16); to determine and change, at its sole discretion, the number of locations, relocations, and the nature of its operations; to buy product from whatever sources whenever it deems necessary; to take whatever action is either necessary or advisable to determine, manage and fulfill the mission of the Employer; to adopt Company rules and regulations from time to time which are not inconsistent with the terms of this Agreement. Such rules as adopted are subject to change, additions, or deletions by the Employer.

In addition to the specific rights set forth above, it is agreed and understood that the Employer reserves all rights, powers, privileges, except those rights specifically restricted by specific provisions of this Agreement.

B. The Union has all rights which are specified in this Agreement and in any exhibits which are made a part of this Agreement, and retains all rights granted by law, except as such rights may be limited by provisions of this Agreement.

SECTION 6 – HOLIDAYS:

A. An employee must work the first scheduled day before the holiday and the first scheduled day after the holiday in order to be eligible for holiday pay.

B. Floating Holiday will be earned after one (1) full year of employment.

C. The following days shall be observed as holidays for all employees:

New Year's Day	Labor Day
Veterans' Day	
Memorial Day	Thanksgiving Day
Independence Day	Christmas Day
Floating Holiday	

Deleted: ¶

D. Any regular employee assigned to a second or third shift that begins between the hours of 6:00 p.m. and 6:00 a.m. shall be paid a shift premium of thirty cents (\$.30) per hour in addition to straight-time wages for all hours worked.¶

Deleted: E. The overtime rate for employees working on a second or third shift will include applicable shift premiums.¶

¶
F. Distribution of Overtime and Available Weekend Work for the Plant:¶

¶
1. Regular employees may bid on available work schedules or shifts during the months of March through September. Bids must be submitted within three (3) working days from posting. The senior qualified employee will be awarded the bid. An employee who successfully bids for an available work schedule or shift must continue on that work schedule or shift for at least six (6) months, or until the shift or work schedule is discontinued, whichever comes first. After assignment, there shall be no line hopping. For bidding purposes, schedules and starting times that are not on a fixed regular forty (40) hour per work basis shall be referred to as "utility." A shift is deemed discontinued when a regular employee is paid less than twenty-four (24) hours in a workweek (Monday through Sunday). A work schedule is deemed discontinued after no work is scheduled, worked, or paid for a period of seven (7) consecutive calendar days. Regular employees may thereafter use their seniority in accordance with Article 13.4.¶

¶
2. Available weekend work is work on Saturday and Sunday which is not performed by an employee on a bid basis, or through utility assignment. Each Tuesday at 8:00 a.m., the Employer will post a sign up sheet for available weekend work. The sign-up sheet will be removed at 3:00 p.m. each Wednesday. The available weekend work will be assigned to the senior qualified employee. However, employees who indicate that they are available by signing up must be available and on-call for the day or days specified. Employees who have signed up for available weekend work, and who are either not available or do not answer the Employer's telephone call, will be subject to disciplinary action.¶

¶
3. Except as provided above, overtime and available weekend work shall be distributed by the Employer in order to maintain efficient operation. ... [2]

Deleted: President's day

The Floating Holiday will be observed on a date mutually agreeable between the Employer and the employee.

D. The Holiday workweek for eight (8) hour, five (5) day workweek will be changed to a four (4) day, eight (8) hour workweek, which shall be interpreted to mean any hours over eight (8) hours in any work day or thirty-two (32) hours in any Holiday workweek shall be paid for at overtime pay rates. If any employee works a holiday, he shall receive eight (8) hours' holiday pay, plus time and one-half (1½) for all hours worked on said holiday. And as stated above, any hours worked or compensated for over eight (8) hours in a day or thirty-two (32) hours in a Holiday workweek shall be paid for at time and one-half.

The Holiday workweek for ten (10) hour, four (4) day workweek will be changed to a three (3) day, ten (10) hour workweek, which shall be interpreted to mean any hours over ten (10) hours in any work day or thirty (30) hours in any Holiday workweek shall be paid for at overtime pay rates. If any employee works a holiday, he shall receive ten (10) hours' holiday pay, plus time and one-half (1½) for all hours worked on said holiday. And as stated above, any hours worked or compensated for over ten (10) hours in a day or thirty (30) hours in a Holiday workweek shall be paid for at time and one-half.

E. No employee shall be on duty on the following holidays: Thanksgiving Day, and Christmas Day, except in cases of emergency.

F. It shall be optional with the Employer whether employees work on the remaining holidays. Night compensation shall be computed on holiday pay if said employee is normally entitled to Night Compensation.

G. All employees who have passed the probationary period shall be entitled to holiday pay; provided they have worked their last scheduled day before and scheduled day after said Holidays. It is understood that their last scheduled day worked, and their scheduled work day upon return to work has not exceeded sixty (60) calendar days.

H. Employees on Layoff shall not be eligible for Holiday Pay. Seasonal employees shall not be eligible for holiday pay.

SECTION 7—VACATIONS:

A. All employees will accrue vacation according to the following vacation accrual schedule:

<u>YEARS OF CONTINUOUS SERVICE:</u>	<u>EARNED VACATION:</u>
1 Year	1 Week
2 Years	2 Week
5 Years	3 Weeks
12 Years	4 Weeks

In the event an employee leaves the employ of his Employer, is laid off, or discharged, such employee shall receive a prorated vacation with pay, provided he or she has been in the continuous service of this Employer for a period of six (6) months or more.

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Twelve consecutive months from and after the date or anniversary date of his or her employment shall constitute one year of service with the Employer. For the purpose of this paragraph, 1600 hours of straight time work performed by an employee shall constitute one year's service with the Employer.

B. The scheduling of vacations shall be by seniority. The Employer shall post a vacation schedule on or before October 1 of each year, granting employees with the most seniority preference on a departmental basis.

For purposes of this Section only, a Department shall be defined as:

1. Operators
2. Packers
3. Freezer/Warehouse
4. Sanitation
5. Foreperson/Utility
6. Maintenance Mechanic

Employees must state their preference for vacation in full week segments.

C. For determining the number of employees allowed on vacation at any one time, the following process shall be followed:

1. The Employer will post a vacation schedule permitting vacations to be available throughout the calendar year. On the vacation schedule, the number of employees to be off work for vacation purposes during any given week shall vary, based upon the number of employees in the respective department and projected production needs.
2. Commencing with the first full week in November, the most senior 25% in each department must select their vacations by seniority. The second full week, the second 25% in each department must select their vacation seniority. The third full week, the third 25% in each department must select their vacation by seniority. The fourth full week, the remaining 25% must select their vacation according to seniority.
3. Employees who do not make their selection during the appropriate week shall lose their seniority preference for such vacation periods.

D. A vacation may not be waived by an employee and extra pay received for working during that period. A vacation may not be accumulated and shall be taken after one (1) year's service. Vacation pay allowance may be drawn in advance immediately preceding the employee's vacation.

E. No vacation shall be forfeited because of sickness or disability occurring prior to the scheduled date. A vacation may be postponed or rescheduled for a later date because of such sickness or disability.

F. Modifications to the vacation schedule, including the taking of single days for the purpose

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of qualifying for Health and Welfare coverage shall be considered on a case-by-case basis depending on the merit of the individual situation, and will be at the discretion of the Employer.

G. When an employee cancels one or more selected vacation weeks beginning in the months of June, July or August, that week or weeks, but only that week or weeks, shall be offered by seniority to employees in the affected department.

H. In the event that employees leave the Employer, is laid off or discharged, such employee shall receive a cash out of all prorated vacation with pay, provided he or she is a permanent employee in the continuous service of the Employer for a period of six months or more. Employees may not use vacation, sick time or any other paid time while on seasonal layoff. Further, the Employer may mandate the use of vacation and further may restrict vacations during busy times of the year.

I. Employees on layoff shall not earn vacation accrual.

New Proposed performance based wages

	<u>High</u>	<u>Medium</u>	<u>Low</u>
<u>Foreperson</u>	<u>\$25.98</u>	<u>\$18.71</u>	<u>\$15.00</u>
<u>Hardening</u>	<u>\$17.91</u>	<u>\$15.47</u>	<u>\$13.03</u>
<u>Maintenance</u>	<u>\$20.65</u>	<u>\$16.84</u>	<u>\$13.03</u>
<u>Operator</u>	<u>\$18.18</u>	<u>\$15.07</u>	<u>\$11.94</u>
<u>Utility</u>	<u>\$18.50</u>	<u>\$15.22</u>	<u>\$11.94</u>
<u>Packer</u>	<u>\$17.62</u>	<u>\$13.52</u>	<u>\$9.41</u>

Deleted: SECTION 8 - WAGES:1
1
Position: ... [3]

A. Any employee who possesses a Class A driver's license shall be paid the Operator rate for any calendar month in which an employee performs driving requiring such a license.

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B. If an employee is worked in a higher classification fifty percent or more of the day, he shall be paid the rate of pay for the higher classification. If worked on the lower classification more than fifty percent of the day, such employee shall be paid for such time worked at the lower scale of pay. The balance shall be paid on the higher scale.

C. All employees shall receive \$.30 per hour extra for all work performed between the hours of 6:00 p.m. and 6:00 a.m.

D. Direct Deposit:

Management agrees to implement once Management assumes payroll processing.

E. Vacation and Sick Leave accrual on weekly pay stubs:

Management agrees to implement once Management assumes payroll processing.

SECTION 9—SAFETY:

For safety and health purposes, it is agreed that when help has been ordered for the freezer, there shall be a minimum of two (2) or more employees at all times in the freezer. It is understood that should a situation occur where there is only one (1) freezer employee (e.g., employee leaving early, employee failing to show up for work), the Company, at its discretion, shall call for a replacement employee or have another employee act as an observer to ensure the freezer employee's safety.

SECTION 10—SANITATION:

A. All establishments, tools and equipment of the Employer must be kept in a clean and sanitary condition, and employees shall maintain their personal appearance and dress in a manner appropriate for the safety considerations and customer relations efforts of the Employer.

B. The Employer shall provide and maintain, for the convenience of their employees, sanitary heated dressing rooms, toilets, wash rooms, lockers, and drinking fountains.

C. The Employer shall make reasonable provisions for the health and safety of its employees during the hours of their employment. The Employer will cooperate with the Union in investigating health and safety conditions, and will carefully consider any recommendations made by the Union in respect thereto. The Union will cooperate in assisting and maintaining the Employer's rules regarding health and safety.

SECTION 11—UNION VISITATION:

A. Authorized agents of the Union may have access to the Employer's facility for the purpose of adjusting disputes, investigating working conditions, and ascertaining that the Agreement is being adhered to. There is to be no interference with the performance of work. All Union agents will sign in upon arrival and sign out prior to departure and wear identification badges provided by the Employer. All Union agents will meet the requirements of GMPs.

B. Shop stewards shall have the right to investigate grievances and violations of the Agreement before work, after work, during lunch, and during breaks in all departments; provided the steward does not interfere with anyone's work.

SECTION 12—THE UNION LABEL:

It is agreed that the Bakery, Confectionery, Tobacco Workers and Grain Millers' Union Label of reasonable size shall be furnished at no cost and may be placed on all wrapped or packaged products manufactured on the premises, excluding private label and franchised products.

SECTION 13—GRIEVANCE AND ARBITRATION PROCEDURE:

DISPUTES

Should any controversy, dispute or disagreement arise over the interpretation of the specific provisions of this Agreement, this settlement of Grievance and Arbitration Procedure shall be the remedy for resolving all issues involving the parties hereto.

GRIEVANCE PROCEDURE:

All parties are encouraged to communicate so as to settle issues at the earliest point. If, however, a dispute cannot be settled, then the Union may pursue the grievance, provided the below-listed steps are followed:

Step 1. Discussion/Meeting: The grieving party must contact the Employer and meet and/or discuss within fourteen (14) calendar days of the date of occurrence (or point of knowledge). If there is no resolution, then the grieving party may proceed to Step 2 below.

Step 2. Written Grievance: If the grieving party wishes to pursue the dispute, then it must reduce the dispute to writing (written grievance), and serve it on the Employer within fourteen (14) calendar days from the end of Step 1. In order to be valid, the written grievance must specify the nature of the contract violation, and disciplinary action and remedy and must be served on the Employer, by hand delivery, by mail, or by fax. The Employer will respond in writing within fourteen (14) days.

Step 3. Mediation: If further discussions fail to resolve the grievance, the grieving party may refer the matter to mediation by sending a letter requesting a mediation hearing to the office of Federal Mediation and Conciliation Service. The mediation request letter must also be sent no more than fourteen (14) calendar days from the date of the other party's response (the grieving party has an additional fourteen (14) calendar days to request mediation if the other party fails to respond). The mediator shall conduct a hearing similar to an arbitration hearing, allowing each party to present its case. The mediation hearing must take place within thirty (30) calendar days from the date of request. The parties may mutually agree, in writing, to waive the mediation step and proceed directly to arbitration. The parties may mutually agree, in writing, to request that the mediator's decision be final and binding.

Step 4. Arbitration: Unless the parties have agreed that the mediator's decision was final and binding, the Union may demand arbitration, provided such demand is served on the Employer, in writing, by hand delivery, by mail, or by fax, within fourteen (14) calendar days of the date of the waiver or the date of the mediator's non-binding decision. The parties must select an arbitrator within fourteen (14) calendar days of the date of receipt of the list by alternately striking names from a seven person list provided by the American Arbitration Association. The grieving party shall strike first. The arbitrator shall have final and binding authority to rule on the merits of a specific case and shall not hear evidence on other matters. The arbitrator shall try to render his decision within thirty (30) calendar days of the arbitration hearing.

TIME IS OF THE ESSENCE

The parties agree that time is of the essence in processing grievances. Accordingly, the right of a mediation or arbitration is lost if the grieving party fails to follow the above steps in a timely manner. All time limits specified herein must be respected unless extended by mutual written agreement which will not be unreasonably withheld. If the Union steps and time limits are not met by the Union, the grievance becomes null and void. If the Employer does not meet the next step, then the grievance automatically moves to the next step.

AUTHORITY

The decision of an arbitrator shall be final and binding, neither the arbitrator nor the mediator shall have the authority to amend, modify or alter the terms of this Agreement.

MONEY CLAIMS

No claim or grievance involving pay or compensation of any kind may extend retroactively for longer than ninety (90) work days under any circumstances, unless a claim is filed in a timely manner and the additional time results for the time required to conclude the grievance procedure.

COST OF ARBITRATION

Each party shall bear its own expense in presenting its case to the arbitrator. The expense of the arbitrator shall be divided between the parties hereto. The Employer agrees to pay a sum equal to but not greater than one-half (½) of said expense and the Union agrees to pay a sum not greater the one-half (½) of said expense.

SECTION 14—DISCHARGE AND DISCIPLINE:

All discipline and discharge shall be for just cause. The Union will be notified of all discharges within twenty-four (24) hours.

SECTION 15—HEALTH AND WELFARE:

A. An eligible employee as used in this Section shall mean a non-seasonal employee who regularly works at least one hundred twenty (120) hours during a calendar month. The Employer shall have no obligation to make health/dental insurance premiums on any seasonal employee.

B. ~~The Employer shall develop and maintain a health plan for all eligible employees, and contribute an estimated \$350.00 per month for Health. Each eligible employee to the Northern California Bakery and Confectionery Health and Welfare Fund for the purpose of providing health and welfare benefits shall have the option to participate in a Dental Plan if offered by the employer.~~

An eligible employee as used in this Section shall mean an employee who works one hundred twenty (120) hours or more during a calendar month for a single Employer. Maternity coverage and Maintenance of Benefits, effective May 1, 1979, the Employers agree to absorb the additional cost of equalizing maternity benefits provided by recent federal legislation for both employee and spouse.

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C. For the purpose of this Section, it is understood that contributions shall be payable on behalf of employees from the 180th day of employment, to those employees that are classified as Full Time permanent employees, regardless of whether or not they are members of the Union. It is further understood that each hour paid for, including hours of paid vacation, paid holidays, and other hours for which pay is received by the employee in accordance with the Collective Bargaining Agreement, shall be counted as hours for which contributions are payable.

2. Employer will abide by any newly enacted Federal or State Laws or regulations.

3. All of the foregoing is subject in all respects to the provisions of the Labor-Management relations Act of 1947, and to any other applicable laws.

F.

H. If during the term of this Collective Bargaining Agreement, any state or federal laws regarding health and welfare benefits come into existence which substantially affect the Employer's obligations hereunder, the Employer may request opening the contract for negotiations regarding this section only.

A 401K program will commence as of the date of this agreement with employees voluntarily contributing the maximum allowed by law, and the employer will match up to 50% matching funds in an account designated by the Employer.

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Deleted: whether said employees are permanent, temporary, or seasonal, or full-time or part-time employees, and

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Deleted: Payments shall be made monthly to a trust fund. The parties shall execute a trust agreement to govern operation of the fund; said agreement to provide for equal representation of Employers and the Union on the Board of Trustees.¶

Deleted: The Board of Trustees shall be empowered to secure adequate health and welfare coverage for the employees covered and to dispose of any surplus funds which may accumulate provided such funds are used for the purpose of health and welfare benefits or as otherwise provided in the trust agreement.¶

¶

D. It is agreed that all contributions shall be made at such times and in such manner as the Trustees require; and the Trustees shall have the authority to have an independent Certified Public Accountant audit the payroll and wage records of the Employer for the purpose of determining the accuracy of contributions to the Welfare Fund.¶

¶

E. If the Employer fails to make contributions to the Fund within thirty (30) days after the date required by the Trustees, the Local Union, in addition to any rights the Trustees may have, shall have the right on forty-eight (48) hours' written notice to take whatever steps ... (4)

Deleted: If at any time during the term of this Agreement, or any renewal or amendment thereof, there should be

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Deleted: requiring the Employer to secure, provide or pay for insurance or welfare benefits or coverage of the type being provided by the Fund to employees covered hereunder, it is understood ... (5)

Deleted: . This Health and Welfare Agreement and the trust agreement shall continue in effect to the expiration date in 2009 of the Collective Bargaining Agreement between the parties hereto ... (6)

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A. An eligible employee as used in this Section shall mean an employee who ... (7)

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SECTION 19—SICK LEAVE:

A. All employees covered by this Agreement who have been continuously employed by their Employer for a period of at least one (1) year shall be entitled to forty (40) hours' sick leave with pay per year. To be eligible for such sick leave, employees must be in the service of his or her Employer for no less than 1,600 straight time hours during the year preceding his or her anniversary date.

B. Unused sick leave from the previous year or years of employment shall accrue from year to year, not to exceed a maximum of two hundred (200) hours.

C. Sick benefits shall be payable commencing the first (1st) day of sick leave. The Employer may require a doctor's certificate as a condition for sick leave payments, which certificate must state the employee is unable to work. Employees are expected to notify the Employer of his or her return to work by the end of his or her regular shift next preceding his or her return to work.

D. Sick leave benefits will be integrated with State Disability or Workers' Compensation benefits, as the case might be. Under no circumstances will any combination of sick leave benefits and State Disability or Workers' Compensation exceed an employee's regular straight time earnings for any particular day.

E. For the purpose of this Section, one day of sick leave shall mean one (1) shift's pay at the employee's straight time classification rate at the time of illness or injury.

F. Sick leave benefits are not convertible to cash.

SECTION 20—BEREAVEMENT LEAVE:

A. Each employee shall be granted up to, but not in excess of three (3) calendar days without loss of pay to mourn the loss of a member of his or her immediate family. For the purposes of this Section, immediate family shall include the grandparents, parents, grandchildren, present spouse of the employee, as well as his brothers, sisters, children, present father-in-law, present mother-in-law and stepchildren.

B. When an employee attends the funeral or memorial service of a member of his immediate family which is over four hundred (400) miles one way, up to two (2) additional days without pay shall be granted.

SECTION: 21—JURY DUTY:

A. The Employer shall reimburse an employee for any loss of wages caused by such employee performing jury duty for a maximum of ten (10) working days during a calendar year.

B. On any day on which an employee is called for jury duty, he/she shall not be required to report for work on any shift starting prior to the time he/she is due to report for jury duty. The regular starting time for an employee cannot be changed or modified on any day on which he/she is to report for jury duty. Days off cannot be changed solely because an employee is called for

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Deleted: C. The payments made in accordance with (B) above shall be allocated as follows:
¶
¶
¶
... [8]

jury duty.

C. If the employee serves less than eight (8) hours on jury duty, he/she may be required to report for work when he/she is excused. He/she may be worked at the straight time rate for the number of hours which, taken together with his/her jury service, will total eight (8). The period of adjournment between the morning and afternoon court sessions shall be deemed time served on jury duty in those instances when the employee is required to report for the afternoon session.

D. For purposes of the preceding section, time spent by the employee in traveling from the courthouse to his/her place of employment shall be deemed time served on jury duty.

E. No employee shall be required to work a scheduled shift starting after 7:00 p.m. on a day before or day on which he/she is required to report for jury duty.

F. The Employer may require reasonable proof or verification of jury service.

G. An employee serving on the Grand Jury shall not be eligible for the provisions of this Section.

SECTION 22—DRUG TESTING:

The Company's Substance Abuse Control Program will be in effect for all employees covered by this Agreement.

SECTION 23 – HEW HIRES:

New hires after 120 days will receive health insurance as provided for regular full-timers. There shall be no Employer contribution for the first 120 days.

SECTION 24—TRANSFERS:

Employees covered by this Agreement shall have the right to follow their work within the classifications covered by this Agreement in the event there is a partial or complete transfer of work covered by this Agreement to 8340 Belvedere Avenue, Sacramento, CA 95825, or to any other facility operated by the Employer within the jurisdiction of Bakers' Union Local No. 85. Employees transferred under this provision will retain all seniority rights.

SECTION 25—SAVINGS CLAUSE:

In the event of governmental control or regulations of any federal or state legislation that causes invalidation of parts of this Agreement, all other portions of this Agreement not so invalidated shall remain in full force and effect.

SECTION 26—NO STRIKE—NO LOCKOUT:

The Union and the Employer agree that there shall be no strike or no lockout during the term of this Agreement. No employee shall be discharged by the Employer because of his or her Union activities. It shall not be a violation of this Agreement, and it shall not be a cause for discharge

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or disciplinary action in the event an employee refuses to enter upon any property involved in a lawful primary labor dispute or sympathy strike, or refuse to go through or work or produce struck goods behind any lawful primary picket line, including the lawful primary picket line of the Union party to this Agreement, and including a lawful primary picket line at the Employer's places of business, provided such a lawful primary picket line is sanctioned by the Bakery, Confectionery, Tobacco Workers and Grain Millers' International Union. In the event of such picketing at the Employer's places of business, work shall continue for a period of time necessary to finish any perishable product in production at the time a lawful primary picket line may be established.

SECTION 27—ENACTMENT CLAUSE:

This Agreement shall be in effect from September 1, 2009 and remain in effect until August 29, 20__, and thereafter from year to year until either party notifies the other party of its intent to amend or terminate this Agreement at least sixty (60) days prior to the date of expiration.

IN WITNESS WHEREOF, the parties hereto have subscribed to the conditions herein and fixed their signatures and seals on the date first above written.

FOR THE EMPLOYER:

FOR THE UNION:

**Vitafreze Frozen Confections,
Inc.**

**Bakery, Confectionery, Tobacco Workers
and Grain Millers' International Union
Local No. 85**

By: _____
Ted Duggan
C.O.O.

By: _____
Marty Zimmerman
Secretary-Treasurer

Dated: _____

Dated: _____

SCHEDULE "A"
SUBSTANCE ABUSE CONTROL POLICY AND PROCEDURE

(Applicable only to Bargaining Unit Employee who are subject to
Department of Transportation Regulations)

This policy addresses the presence of drugs and/or alcohol in the bodily systems of employees while at work and the use of such substances during employment. In addition, this Policy addresses the possession, distribution, purchase or sale of illegal drugs and controlled substances during employment.

Drug and alcohol involvement during employment may adversely affect an employee's performance, efficiency, safety and health and may seriously impair his/her value to the Employer. In addition, drugs and alcohol constitutes a potential danger to the welfare and safety of other employees and exposes the Company to risks of property loss or damage or injury to other persons.

The Company has established the following rules:

1. Any employee who, while on Company premises or during work hours, sells distributes, possesses, offers for sale or distribution or who possesses for sale or distribution any illegal drugs or controlled substances will be subject to immediate disciplinary action up to and including discharge. The Company will impose such discipline when this rule has been violated. Discipline imposed will be subject to the grievance and arbitration procedures set forth in the Collective Bargaining Agreement.
2. Any employee who, while on Company premises or during working hours, uses, consumes or works with alcoholic beverages, illegal drugs or controlled substances in his/her bodily system will be subject to immediate disciplinary action. Discipline impose will be subject to the grievance and arbitration procedures set forth in the Collective Bargaining Agreement.

EDUCATION

This Drug-Free Workplace Policy will be announced to all employees and all employees will receive and acknowledge receipt of a written copy of this Drug-Free Workplace Policy. Supervisors and Managers will receive training in addressing substance abuse issues. The training will be provided through the Teamster Alcohol Rehabilitation Program ("TARP"), and employee assistance program.

Voluntary employee meetings will be conducted for all regular employees in the work force. This Drug-Free Workplace Policy will be posted. Posters regarding the availability of the Teamster Assistance Program will be displayed.

EMPLOYEE ASSISTANCE PROGRAM

When an employee is using and/or abusing alcohol and/or controlled substances, the employee will be encouraged to immediately seek medical or professional assistance. Employees may be referred to the TARP counselor by their supervisor or Union Representative or they may seek help directly on a confidential basis. All employees will be encouraged to voluntarily seek treatment without fear of disciplinary action.

The Company encourages any employee with an alcohol or drug problem to ask for help. Such employee will be eligible for a leave of absence after sick leave benefits have been exhausted, if the employee is accepted into a rehabilitation program. This matter will be treated in an absolutely confidential manner.

DEFINITIONS

3. Commercial Motor Vehicles ("CMV")

A commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle: (i) has a gross combination weight rating of 26,001 or more pounds, inclusive of a towed unit with a gross vehicle weight rating or more than 10,000 pounds; or (ii) has a gross vehicle weight rating of 26,001 or more pounds; or (iii) is designed to transport 16 or more passengers, including the Driver; or (iv) is of any size and is used in the transportation of materials found to be hazardous for the purposes of the federal placarding requirements.

4. Safety-Sensitive Function (s).

Safety-sensitive functions include all driving time; all time waiting to be dispatched; all time remaining in readiness to drive; all time in or upon a CMV (except resting in a sleeper berth); all time loading; unloading, inspecting, servicing or conditioning vehicles; all time supervising or assisting in or attending to the loading or unloading of vehicles; all time repairing or obtaining assistance to repair, or remaining in attendance during the repair of a disable vehicle.

5. On-Duty and Duty.

"On-duty" and "duty" includes all and any time engaging in safety-sensitive functions. It also includes all time performing any other work for the Company.

6. Refuse to Submit and Refusal to Submit.

A refusal to submit or to refuse to submit to testing means (i) failure to provide adequate breath for testing without a valid medical explanation; (ii) failure to provide adequate urine for controlled substances testing without a valid medical explanation; (iii) engaging in conduct that clearly obstructs the testing process; or (iv) refusing to sign the certification forms or otherwise to cooperate with the testing process in a way that prevents the completion of the test.

WHEN TESTING IS REQUIRED AND CONSEQUENCES OF REFUSAL

Company and federal regulations require Drivers to submit to alcohol and controlled substance tests administered in accordance with the regulations. A refusal to submit to an alcohol or a controlled substance test is a violation of federal regulations and of Company policy. At a minimum, a Driver who refuses to submit to such tests: (i) will not be permitted to perform or continue to perform safety-sensitive functions; (ii) will be referred to resources available to the Driver to evaluate and resolve problems associated with the misuse of alcohol and the use of controlled substances (as discussed further below in the section entitled "Driver Assistance"); (iii) must submit to return-to-duty testing and test negative in such a test for controlled substances and less than .02 for alcohol; (iv) may receive disciplinary action up to and including immediate termination.

If a Driver refuses to submit to testing, such refusal shall be documented on Form B. If a Driver consents to testing, such consent shall be documented on Forms C & D. A copy of the forms shall be given to the laboratory and/or clinic.

Federal regulations and Company policy require testing in the following six circumstances:

1. Pre-employment Testing.

Prior to the first time a Driver performs safety-sensitive functions, the Driver shall undergo testing for controlled substances. There are limited exceptions to the pre-employment testing requirement for drivers who have recently undergone testing and who pass the tests where the driver has not violated and DOT regulations regarding alcohol or controlled substances.

2. Post-Accident Testing.

As soon as practicable following an accident involving a CMV, each surviving driver who is performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or who receives a citation under state or local law for a moving traffic violation arising from the accident must submit to drug and alcohol testing. A Driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the Company to have refused to submit to testing.

3. Random Testing.

Drivers will be selected for random alcohol and controlled substances testing using a scientifically valid method such as a computer-based random number generator that is matched with a Driver's social security number, payroll identification number or other comparable identifying numbers. Each Driver shall have an equal chance of being tested each time selections are made. Accordingly, even if a Driver has been randomly tested within the last year, the Driver can be selected again for random testing in that same year. Random tests are unannounced and will be spread reasonably throughout the calendar year.

When a Driver is notified of selection for random testing, the Driver must proceed to the test site immediately; provided, however, that if the Driver is performing a safety-sensitive function at the time of notification, the Company shall ensure that the Driver ceases to perform the safety-sensitive function and then proceeds to the test site as soon as possible. A Driver shall only be tested for

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alcohol while the Driver is performing safety-sensitive functions, just before the Driver is to perform safety-sensitive functions, for just after the Driver has ceased performing such functions.

4. Reasonable Suspicion Testing.

A. Concerning alcohol. The Company shall require a Driver to submit to an alcohol test when the Company has reasonable suspicion to believe that the Driver has violated the prohibitions set forth above concerning alcohol. The determination that reasonable suspicion exists must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the Driver. Alcohol testing is authorized only if the reasonable suspicion observations are made during, just preceding, or just after the period of the workday that the Driver is required to be in compliance with this policy. A Driver may be directed by the Company to undergo reasonable suspicion testing only while the Driver is performing safety-sensitive functions, just before the Driver is to perform safety-sensitive functions, or just after the Driver has ceased performing such functions. The grounds for reasonable suspicion must be documented. (Form A)

Even if there is not reasonable suspicion for alcohol testing as described above, no Driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the Driver is under the influence of, or impaired by, alcohol, as shown by the behavior, speech and performance indicators of alcohol misuse. In such circumstances, the Driver cannot perform safety-sensitive functions until an alcohol test is administered and the Driver's alcohol concentration measures less than .02 or twenty-four hours have elapsed following the determination that there is reasonable suspicion to believe that the Driver has violated the prohibitions of this policy concerning the use of alcohol.

B. Concerning controlled substances. The Company shall require a Driver to submit to a controlled substance test when the Company has reasonable suspicion to believe that the Driver has violated the prohibitions concerning controlled substances. The Company's determination that reasonable suspicion exists must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the Driver. The observation may include indications of the chronic and withdrawn effects of controlled substances. The grounds for reasonable suspicion must be documented. (Form A)

C. When an employee is asked to submit to drug and/or alcohol testing based on reasonable suspicion, a shop steward, Volunteer Employee Assistant or, if neither are readily available, a co-employee shall be present.

5. Return-To-Duty Testing.

A. Concerning alcohol. Before a Driver returns to duty required the performance of a safety-sensitive function after engaging in prohibited conduct concerning alcohol, the Driver shall undergo a return-to duty alcohol test with the result indicating an alcohol concentration of less than .02.

B. Concerning controlled substances. Before a Driver returns to duty requiring the performance of a safety-sensitive function after engaging in prohibited conduct concerning

controlled substances, the Driver shall undergo a return-to-duty controlled substances test with the result indicating a verified negative result for controlled substances use.

6. Follow-up Testing.

Following a determination that a Driver is in need of assistance in resolving controlled substances and/or alcohol problems, the Driver is subject to unannounced follow-up alcohol and/or controlled substances testing as directed by a substance abuse professional. Follow-up alcohol testing shall be conducted only when the Driver is performing safety-sensitive functions, just before the Driver is to perform safety-sensitive functions, or just after the Driver has ceased performing safety-sensitive functions.

TESTING PROCEDURES

1. Alcohol Testing.

Alcohol testing is performed by a breath-alcohol technician (BAT) who has completed a course of instruction in that operation of an evidential breath-testing (EBT) device. That training includes training in the principles of EBT methodology, operation and calibration checks, the fundamentals of breath analysis for alcohol content, the procedures for obtaining a breath sample and interpreting and recording EBT results. Unless another person is unable to perform the test in a timely manner, normally the Driver's direct supervisor will not be the BAT conducting the test.

Law enforcement officers who have been certified by state or local governments to conduct breath-alcohol testing are deemed to qualified as BATs.

To safeguard the integrity of the testing process and the validity of EBT and to protect against a test being inappropriately attributed, the Company will either use an EBT device that meets certain standards set forth in the regulations (e.g., capable of providing the results in triplicate; of assigning a unique and sequential number to each completed test; of printing out on each copy of the result the manufacturer's name for the device, the device's serial number and the time of the test; of distinguishing alcohol from acetone at the .02 alcohol concentration level; of testing an air blank prior to each collection of breath and performing an external calibration check) or an EBT device that does not meet these standards, using the EBT device in conjunction with a log book with columns for the test number, date of the test, quantified test results and initials of the Driver taking each test.

To safeguard the integrity of EBT testing, the Company will maintain a quality assurance plan developed by the manufacturer.

Breath testing normally will be conducted in a location that affords visual and aural privacy to the person being tested.

2. Controlled Substances Testing.

Controlled substances testing is performed by testing a urine sample donated by the Driver at a collection site. After the collection site has collected, split and secured the sample, the sample (both bottles) will be sent to a laboratory which has been certified by the Department of Health and

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Human Services ("DHHS"). The laboratory will perform an initial immunoassay test and if that test is positive, the positive result will be confirmed using the gas chromatography/mass spectrometry methodology. A medical review officer will review the results and will engage in reasonable attempts to contact the Driver before verifying a positive test result and informing the Company of the positive test result. A Driver can request testing of the "split" sample within seventy-two (72) hours of receiving notification of the initial test result. If the Driver so requests, the split sample will be tested at another laboratory certified by the Department of Health and Human Resources. These collection and testing procedures protect the Driver, the integrity of the testing process, safeguard the validity of the test result and also protect against the result being attributed to the wrong Driver.

CONSEQUENCES OF A POSITIVE RESULT

1. Controlled Substances.

Testing positive for controlled substances or refusing to test in accordance with these procedures will result in disciplinary action up to and including termination. In addition, safety-sensitive functions and must submit to return-to-duty testing and test negative in such tests for controlled substances prior to any return to duty. In addition, current Drivers will be referred to resources available to the Driver to evaluate and resolve problems associated with the misuse of alcohol and the use of controlled substances (as discussed further below in the section titled "Driver Assistance").

2. Alcohol Testing.

If a Driver tests positive for alcohol at a level of .04 or greater, or if a Driver refuses to test in accordance with these procedures, the Driver is subject to disciplinary action up to and including immediate termination. In addition, the Driver will not be permitted to perform or continue to perform safety-sensitive functions and must submit to return-to-duty testing (if the Company has decided to retain said Driver) and test at a level of under .02 for alcohol. In addition, a current Driver will be referred to resources available to the Driver to evaluate and resolve problems associated with the misuse of alcohol and the use of controlled substances (as discussed further below in the section titled "Driver Assistance").

If the Driver who is tested is found to have an alcohol concentration of .02 or greater but less than .04, the Driver shall not be permitted to perform or continue to perform safety-sensitive functions for the Company until the start of the Driver's next regularly scheduled duty, but not less than twenty-four (24) hours following the administration of the test.

3. Rehabilitation.

Drivers shall have the opportunity to participate in a driver assistance program as defined below as an alternative to testing provided: (1) it is a first violation of this policy; (2) the Driver requests rehabilitation at the time the Employer requests he/she submit to a drug/alcohol test; and (3) the Driver voluntarily executes a return to work agreement, submits to Return to Duty and Follow-up testing in accordance with this policy. An employee who is eligible for and who requests rehabilitation shall, as a condition of continued employment, execute a "Return to Work Agreement." (Form E.)

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DRIVER ASSISTANCE PROGRAM

1. Driver Assistance.

Attached as Appendix A is educational information regarding the effects of alcohol and controlled substances on an individual's health, work, and personal life and the signs and symptoms of an alcohol or controlled substances problem.

When you are concerned about your use of alcohol or controlled substances or the use of alcohol or substances by a co-worker, seek assistance from the Driver Assistance Program.

In some circumstances, referral to a substance abuse professional is required under the regulations. When a Driver has engaged in prohibited conduct, the Driver shall be referred to substance abuse professionals and shall be evaluated by the substance abuse professional who shall determine what assistance, if any, the Driver needs in resolving problems associated with alcohol misuse and controlled substance use. Each Driver identified as needing assistance, shall be evaluated by a substance abuse professional to determine that the Driver has properly followed and rehabilitation program as prescribed by the professional. In addition, the Driver shall be subject to unannounced follow-up alcohol and controlled substances tests administered by the Company following the Driver's return to duty. The number and frequency of such follow-up testing shall be as directed by the substance abuse professional and shall consist of at least six (6) tests in the first twelve (12) months following the Driver's return to duty. The Company may direct the Driver to undergo return-to-duty and follow-up testing for both alcohol and controlled substances, if the substance abuse professional determines that return-to-duty and follow-up testing for both alcohol and controlled substances are necessary for that particular Driver. Follow-up testing shall not exceed sixty (60) months from the date of the Driver's return to duty. The substance abuse professional may determine the requirement for follow-up testing at any time after the first six (6) tests have been administered, if the professional determines that such testing is no longer necessary.

When referral to a substance abuse professional is required by the regulations (i.e., when a Driver has engaged in prohibited conduct), the Driver must use the Teamsters Alcohol Rehabilitation Program ("TARP"). If the substance abuse professional determines that a Driver requires assistance, the Driver will be referred to a person or organization independent from the substance abuse professional. Generally, the substance abuse professional will refer the Driver to TARP.

Any Driver who believes he or she has a drug or alcohol dependency problem is also urged to contact in confidence the Drug or Alcohol Abuse Hotline (1-800-382-4357).

The Driver assistance, referral and evaluation program discussed in this section does not apply to applicants for employment. Rather, this section applies only to current Drivers, and this section does not in any way change, alter or modify the Company's right to discipline the Driver up and including immediate termination.

DRIVER ASSISTANCE TRAINING PROGRAM

Drivers and Company supervisory personnel are required to participate in controlled substance abuse training for at least sixty (60) minutes and for alcohol misuse at least an additional sixty (60) minutes during the course of their employment with the Company. The training program shall include information concerning the effects and consequences of controlled substance use on personal health, safety and the work environment. Training also shall include education in the manifestation and behavioral, speech and performance causes that indicate alcohol or controlled substance use or abuse.

This policy has been instituted in order to assure the maximum safety and well being of all Drivers, the public and other personnel. Your assistance and cooperation toward the achievement of this goal is vitally important. The Company regrets any inconvenience that this policy may cause but believes it necessary for the overall well being of all Drivers and the general public.

The principles of seniority shall apply whenever practical in cases of layoffs, rehire, vacation preference, and shift preference of seniority employees, all other qualifications being equal. The Employer shall be the sole judge of employees' qualifications but shall not act arbitrarily or capriciously. It is recognized by all parties that in applying this Article, it is essential that the Employer have the most qualified, available employee for all covered classifications.

5. Termination of Seniority: An employee's seniority and employment may be terminated for one of the following reasons. For the purpose of this paragraph, compulsory military service will not result in the loss of seniority:

- A. Discharge for cause;
- B. Resignation;
- C. Absence in excess of one (1) year due to on- or off-the-job illness or injury (unless further extended by mutual agreement and if a mutual agreement cannot be reached, the matter may be made the subject of the Grievance Procedure). In case of time lost as a result of an accident or injury recognized by the Worker's Compensation Board as suffered during the course of employment with the Employer, this period shall be extended in accordance with State law;
- D. Layoff due to lack of work in excess of six (6) months;
- E. Failure to respond to recall within three (3) days following notice of recall by registered mail at his or her last known address on record with the Employer. However, this shall not apply if an employee is sick or has a valid reason for not being able to report to work;
- F. Unauthorized absence from work for two (2) consecutive working days; termination occurs at 5:00 p.m. on the second day;
- G. Failure to return to work in accordance with the terms of an approved leave of absence;
- H. Failure to report for work by second regular workday following physician's release to return to work.

6. If an employee does not report to work as scheduled and does not notify the Employer, they are presumed to have quit unless otherwise excused by the Employer for good cause shown.

7. When a permanent vacancy exists as solely determined by the Employer, the Employer agrees to post a notice of the permanent vacancy in order to allow interested employees to advise the Employer of their desire to be considered for the available position.

The Employer retains the right to select the most qualified individual. When a position opens on a new shift, such position shall be posted. A new shift shall mean at least a two (2) hour difference in starting or quitting time. After bidding on a shift, there shall be no bumping or change in line until a permanent opening is created. The Company retains the right to operate a shift operation. Further, the Company shall retain the ability to hire from outside the Company at its own sole discretion. In determining an employee's ability to fill a vacancy, reading and writing English shall be of high importance.

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E. The overtime rate for employees working on a second or third shift will include applicable shift premiums.

F. Distribution of Overtime and Available Weekend Work for the Plant:

1. Regular employees may bid on available work schedules or shifts during the months of March through September. Bids must be submitted within three (3) working days from posting. The senior qualified employee will be awarded the bid. An employee who successfully bids for an available work schedule or shift must continue on that work schedule or shift for at least six (6) months, or until the shift or work schedule is discontinued, whichever comes first. After assignment, there shall be no line hopping. For bidding purposes, schedules and starting times that are not on a fixed regular forty (40) hour per work basis shall be referred to as "utility." A shift is deemed discontinued when a regular employee is paid less than twenty-four (24) hours in a workweek (Monday through Sunday). A work schedule is deemed discontinued after no work is scheduled, worked, or paid for a period of seven (7) consecutive calendar days. Regular employees may thereafter use their seniority in accordance with Article 13.4.

2. Available weekend work is work on Saturday and Sunday which is not performed by an employee on a bid basis, or through utility assignment. Each Tuesday at 8:00 a.m., the Employer will post a sign up sheet for available weekend work. The sign-up sheet will be removed at 3:00 p.m. each Wednesday. The available weekend work will be assigned to the senior qualified employee. However, employees who indicate that they are available by signing up must be available and on-call for the day or days specified. Employees who have signed up for available weekend work, and who are either not available or do not answer the Employer's telephone call, will be subject to disciplinary action.

3. Except as provided above, overtime and available weekend work shall be distributed by the Employer in order to maintain efficient operation. The Employer has the right to require overtime and weekend work, and employees may not refuse such assignment, unless excused by the Employer.

G. Employees who are unable to report for work as scheduled, including absences due to illness or injury, are required to directly contact their supervisor or the leadman on duty if the supervisor is not available, prior to the commencement of their shift. Employees may also meet this requirement by leaving a voice mail for their supervisor. However, the employee will still be required to contact their supervisor directly later that

same day to report the nature of the illness or injury, anticipated date of return and other relevant matters

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SECTION 8—WAGES:

Position:	September 1, 2009	September 1, 2010	September 1, 2011
Foreperson	\$18.70	\$18.70	\$18.70
Utility Worker	\$18.45	\$18.45	\$18.45
Juice Mixer, Operator, Sanitors	\$18.20	\$18.20	\$18.20
Hardening Room, General Plant, Loader	\$17.91	\$17.91	\$17.91
Packer	\$17.62	\$17.62	\$17.62
Head Packer	\$17.76	\$17.76	\$17.76
Maintenance Mechanic	\$20.65	\$20.65	\$20.65

Three (3) year freeze in wages.

New Hire Rates Effective October 15, 2009

		<i>After 1 year</i>	<i>After 2 years</i>
Hardening Room,	\$11.50	\$11.75	\$12.00
General Plant	\$11.50	\$11.75	\$12.00
Loader	\$11.50	\$11.75	\$12.00
Packer	\$10.50	\$10.75	\$11.00
Juicer	\$12.50	\$12.75	\$13.00
Operator	\$12.50	\$12.75	\$13.00
Sanitors	\$12.50	\$12.75	\$13.00
Seasonal Rate	\$10.50	\$10.75	\$11.00

Page 10: [4] Deleted **Jim Presley** **8/26/2010 3:28:00 PM**
The Board of Trustees shall be empowered to secure adequate health and welfare coverage for the employees covered and to dispose of any surplus funds which may accumulate provided such funds are used for the purpose of health and welfare benefits or as otherwise provided in the trust agreement.

D. It is agreed that all contributions shall be made at such times and in such manner as the Trustees require; and the Trustees shall have the authority to have an independent Certified Public Accountant audit the payroll and wage records of the Employer for the purpose of determining the accuracy of contributions to the Welfare Fund.

E. If the Employer fails to make contributions to the Fund within thirty (30) days after the date required by the Trustees, the Local Union, in addition to any rights the Trustees may have, shall have the right on forty-eight (48) hours' written notice to take whatever

steps are necessary to secure compliance with this Section, any provisions of the Collective Bargaining Agreement, including the no-strike clause, to the contrary notwithstanding. It is expressly understood that the Employer's liability for payment hereunder shall not be subject to the grievance or arbitration procedure of the Collective Bargaining Agreement and that the no-strike clause, if any, shall not prohibit any action the Union chooses to take to compel payment of contributions. The Employer shall be liable for all costs incurred in collecting the payments due hereunder, together with attorneys' fees and such penalties as may be assessed by the Trustees.

1. The parties agree and represent that there is no other agreement between them regarding Welfare Benefits, other than this Article presently in effect. The parties further agree that no agreement regarding Welfare Benefits other than this Article shall be effective during the period covered by the said Collective Bargaining Agreement, except with the consent of the Board of Trustees.

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requiring the Employer to secure, provide or pay for insurance or welfare benefits or coverage of the type being provided by the Fund to employees covered hereunder, it is understood that the aforesaid plan of benefits provided by the Fund may have to be varied in compliance with such new law. If such law does not permit the Fund to assume and discharge the Employer's obligations, the Employer may, upon 30 days written notice to the Union, reopen this Agreement solely for the limited purpose of reviewing the amount of Employer contributions to the Fund. It is understood, however, that the benefits required by the present Unemployment Compensation Disability Law of the State of California are being provided and will continue to be provided by means other than the Employer contributions to the above Fund.

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This Health and Welfare Agreement and the trust agreement shall continue in effect to the expiration date in 2009 of the Collective Bargaining Agreement between the parties hereto.

G. By the execution of this Collective Bargaining Agreement, the individual Employer and/or Employer's Association signatory hereto, adopts and agrees to be bound by that certain Agreement and Declaration of Trust entitled Northern California Bakery and Confectionery Health and Welfare Trust and by all obligations, plan, rules, amendments, modifications or changes thereof, made by the parties thereto as are now or may hereafter be established by said Trust. The individual Employer further agrees and hereby does irrevocably designate and appoint the Employer members of said Trust Fund as his or its attorneys in fact for the selection, removal and substitution of Trustees or Board members as provided in the Trust Agreement or as may be hereafter provided for pursuant to said Trust Agreement.

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SECTION 16—DENTAL CARE:

- A. An eligible employee as used in this Section shall mean an employee who regularly

works at least one hundred twenty (120) hours during a calendar month.

B. The Employer will contribute Nine Hundred Twenty Seven Dollars (\$927.00) for combined B & C Western Conference Dental Fund and Health Fund for each covered employee who has received pay for one hundred twenty (120) or more hours during the previous month and for whom contributions are due and payable under the terms of the Agreement and Declaration of Trust, dated April 1, 1965, providing for said Fund. The Employer hereby agrees to be a party to said Trust Agreement and to be bound by all of the terms and provisions thereof, as presently in effect and as may be amended from time to time. The Employer shall have all the rights and obligations set forth in said Trust Agreement and shall make such additional contributions as are necessary to maintain present benefits for the duration of this Agreement.

C. The Employer further agrees irrevocably to designate as its representatives on the Board of Trustees of the Fund the Trustees named in said Trust Agreement as Employer Trustees and to the selection of their successors as provided in said Trust Agreement, and agrees to be bound by all the actions taken by said Employer Trustees pursuant to said Trust Agreement.

D. If the Employer fails to make the required contributions to the Dental Fund within thirty (30) days after the trustees have determined that such Employer is delinquent with respect thereto, the Local Union, in addition to any rights the Trustees may have, shall have the right, on forty-eight (48) hours' written notice, to take whatever lawful steps the Union deems necessary or desirable to secure compliance with this Section, any provisions of this Collective Bargaining Agreement, including the no-strike clause, to the contrary notwithstanding. It is expressly understood that a determination by the Trustees that an Employer is delinquent with respect to the payment of Dental Fund contributions shall not be subject to the grievance or arbitration procedure of this Collective Bargaining Agreement and that the no-strike clause shall not prohibit any action the Union chooses to take to compel payment of said contributions.

E. Copies of any renewal or extension of this Agreement will be promptly furnished to the Dental Fund office and, if not consistent with the provisions of the B & C Western Conference Dental Fund Trust Agreement, can be used by the Trustees as the basis for termination of the participation of the Employer.

SECTION 17—MAINTENANCE OF BENEFITS: HEALTH & WELFARE/DENTAL AND DENTAL BENEFIT:

There shall be no increase in Employer contribution over the amount of Nine Hundred Twenty Seven Dollars (\$927.00) per month for the duration of the contract. Any increase over this amount for the duration of the contract shall be paid for by increase in employee contributions.

SECTION 18—PENSIONS:

It is hereby agreed to provide pension and retirement benefits as follows:

A. The Employer hereby agrees to be bound as a party by all the terms and provisions of the Agreement and Declaration of Trust dated September 11, 1955, as amended, establishing the Bakery and Confectionery Union and Industry International Pension Fund (hereinafter called the Pension Fund) and said Agreement is made part hereof by reference.

B. Commencing with the Effective Date(s) stated in Paragraph C., the Employer agrees to make payments to the Pension Fund for each employee working in job classifications covered by a Collective Bargaining Agreement between the Employer and the Union, as follows:

For each hour or portion thereof, which an employee works in such a job classification or receives pay in lieu of work (such as holiday, vacation, pro rata vacation, and severance pay), the Employer shall make a contribution as stated in Paragraph C. to the Pension Fund up to a maximum of forty (40) hours in any week for any one employee. (The stated maximum does not apply to pro rata vacation or severance pay.)

Contributions shall be paid from the first day the employee begins working in a job classification covered by the Collective Bargaining Agreement between the Employer and the Union, and shall be paid on behalf of all employees in covered job classifications—there are no exceptions for employees who are not members of the Union, temporary, seasonal, or part-time employees, for leased employees, or for any other type of employee. The term "employee" does not include a self-employed person, corporate officer, owner, or partner, as defined in Section 1.09 of the Pension Fund Rules and Regulations.

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C. The payments made in accordance with (B) above shall be allocated as follows:

	Effective Date for Duration of Contract
	December 1, 2009
Plan A	1.81
Plan C	.2600
Plan G	.3900

Total Weekly	\$2.40
Total Weekly	\$98.40

The amount of the pension contribution for eligible non-seasonal employees shall remain frozen for the duration of the contract.

There shall be no pension payment obligation on the part of the Employer for seasonal employees.

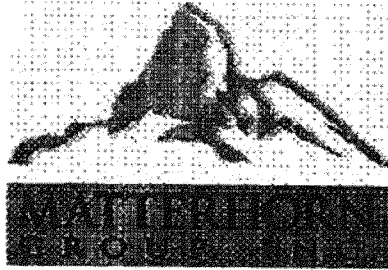
D. It is agreed that the Pension Plan adopted by the Trustees of the Pension Fund shall be such as will qualify for approval by the Internal Revenue Service of the United States Treasury Department, so as to enable the Employer to treat contributions to the Pension Fund as a deduction for income tax purposes.

E. Contributions provided for herein shall be paid monthly and shall be accompanied by a completed remittance report. Both payment and report are due on the tenth day of the month following the month covered by the report. In the event the Employer fails promptly to pay amounts owed, the Employer shall pay such collection costs, including court costs and reasonable attorneys' fees, as the Pension Fund shall incur, and shall pay interest at such rate as the Trustees shall fix from time to time.

F. The payments so made to the Pension Fund shall be used by it to provide retirement benefits for eligible employees in accordance with the Pension Plan of said Fund, as determined by the Trustees of said Fund, to be applied to the eligible employees based on the amount of Employer contribution.

G. This clause encompasses the sole and total agreement between the Employer and the Union with respect to pensions or retirement. If any other agreement between the Employer and the Union (including the Collective Bargaining Agreement) contains provisions inconsistent with this clause, those inconsistent provisions shall have no force and effect with respect to the obligations and agreements set forth herein.

H. This clause is subject in all respects to the provisions of the Labor-Management Relations Act of 1947, as amended, and to any other applicable laws.



September 22, 2010

Mr. Derek Cutter
Teamsters Local 324
2686 Portland Road Northeast
Salem, OR 97301-0125

Via: U.S. Mail; e-mail: Derek.cutter@teamsterslocal324.org and Facsimile: (503)-378-7590

Dear Mr. Cutter:

As you know, Matterhorn Group Inc. and its two subsidiaries, Deluxe Ice Cream Company and Vitafreze Frozen Confections, Inc. (collectively, the "Company"), filed voluntary petitions under Chapter 11 of the U.S. Bankruptcy Code on July 26, 2010.

A major cause of the Company's need to file for bankruptcy was the economically disadvantageous labor contract the Company has with your union. Submitted to you with this letter is a proposal which provides for those modifications to the terms of the Company's current contract with your union which the Company believes are necessary to permit the reorganization of the Company and assures that all creditors, the Company and all of the affected parties are treated fairly and equitably. Also included with this letter is a copy of the Company's July, 2010 financial statement and the Company's projected budget for the next twelve months using the terms of the Company's current contract with your union. This is the most complete and reliable financial information of the Company available at this time. It should be noted that the July financial statement does not include a \$1.1 million inventory write-down that occurred prior to the time of the Company's bankruptcy filing and which was taken by the Company in August, 2010 and will be reflected in those financial statements when they are completed. We would be willing to provide you with any other reasonable and relevant information that you request which is necessary to assist you and the union to evaluate the proposal contained in this letter.

This proposal is based on prevailing wages paid in the statistical metropolitan area of Salem. We realize the Company must be competitive to attract sufficient numbers of workers and have tried to present a package that will allow the Company to do so relative to other employment opportunities with similar skill sets. We are prepared and willing to meet with the union's authorized representative(s) at reasonable times to confer in good faith in attempting to reach mutually satisfactory modifications of the union contract.

Please be advised that as timing is of the essence, if the Company and the union are unable to come to an agreement on terms of a revised contract substantially consistent with the terms in the attached proposal by October 8, 2010, the Company will proceed with filing an application with the Bankruptcy Court pursuant to Section 1113 of the Bankruptcy Code to reject the Company's current contract with the union in the most expeditious manner possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan W. Bell", with a long horizontal flourish extending to the right.

Nathan W. Bell
CEO/President
Matterhorn Group, Inc.

AGREEMENT

between

DELUXE ICE CREAM COMPANY

and

GENERAL TEAMSTERS LOCAL NO. 324

August 1, 2008 - July 31, 2011

PALLETIZERS AND PACKAGERS

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AGREEMENT

THIS AGREEMENT, made and entered into by and between **DELUXE ICE CREAM COMPANY**, Salem, Oregon, hereinafter referred to as the "Employer", and **GENERAL TEAMSTERS LOCAL NO. 324**, hereinafter referred to as the "Union", is made and entered into for the purpose of fixing the scale of wages, schedule of hours, and working conditions of all employees of the Employer employed in the classifications set forth in this Agreement.

And it is hereby agreed by the parties that the terms of this Agreement are as follows:

ARTICLE 1

UNION SECURITY AND DUES CHECK-OFF

1.1 The Employer recognizes the Union as the sole collective bargaining agent only for employees employed in job classifications specified in Article 6 of this Agreement.

1.2 All other classifications and employees not specifically included in Article 1.1 shall be excluded from coverage under this Agreement, including but not limited to supervisors as defined by the National Labor Relations Act, as amended, office clerical, and administrative employees, and all employees covered by the machine operators, forklift, salesmen, loaders and checkers, drivers and maintenance agreement.

1.3 All employees subject to this Agreement who are not already members of the Union, ~~if chosen by the employee, can become members of and maintain membership in~~ the Union after the thirtieth (30th) day following the beginning of employment or the effective date of this Agreement, whichever is later. All employees subject to this Agreement shall continue membership in the Union as a condition of continued employment.

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1.4 The Union agrees that it will make membership in the Union available to all employees subject to this Agreement on the same terms and conditions as are generally applicable to other members of the Union, and further, that membership in the Union will not be denied or terminated for any reasons other than the failure of any employee subject to this Agreement to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or attaining membership in the Union.

1.5 The Union agrees that written notice shall be given to the Employer at least seven (7) calendar days before any employee subject to this Agreement is required to be removed from his employment by reason of his failure to become or remain a member of

the Union, as required by this Article. In the event said employee reinstates within the prescribed seven (7) calendar days from notification, he shall not be deprived of any of the provisions set forth in this Agreement. Before sending the Employer a request to terminate an employee under this Article, the employee shall first be given notice in writing by the Union.

1.6 The Employer agrees to notify the Union in writing within seven (7) days (excluding Saturdays, Sundays, and holidays) from the date of the first employment of any employee subject to this Agreement of the name of such employee, his hire date, his social security number, address, and telephone number.

1.7 The Employer agrees to deduct monthly from the wages of each employee covered by this Agreement uniform initiation fees and periodic dues owing to the Union as a result of membership therein, upon the individual authorization for such deductions.

The Union shall furnish the Employer monthly (but not later than the first day of each month) a record of those for whom deductions are to be made and the amounts of the deductions.

1.8 The Union shall indemnify, defend, and hold the Employer harmless against any and all claims, demands, suits, or other forms of liability that shall arise out of or result from action taken by the Employer for the purpose of complying with this Article.

ARTICLE 2

DEFINITION OF EMPLOYMENT CLASSIFICATIONS

2.1 **Probationary Employee:** The probationary period for new employees is one hundred twenty (120) days of actual work as defined in Article 13, Seniority. Employees are not eligible for any employee benefits during their probationary period, including holiday pay, vacation pay, health and welfare, Pacific Coast Benefits Trust, sick leave, funeral leave, and jury duty pay.

Probationary employees may be terminated or laid off at any time by the Employer at its sole discretion. The employee or the Union shall not have recourse to Article 16, Grievance Procedure, over his termination or layoff.

2.2 **Regular Employee:** A regular employee is an individual who has successfully completed the probationary period, and who works in a classification covered by this Agreement. Provided they meet the other necessary qualifications, regular employees are eligible for all of the employee benefits.

ARTICLE 3

NO STRIKE/NO LOCKOUT

3.1 There shall be no strikes, sympathy strikes, work stoppages, picketing, or interruption or impeding of work. No officer or representative of the Union shall authorize, instigate, aid, or condone any such activities. No employee shall participate in any such activities. Violation by any employee of any provision of this Article shall constitute proper cause for discharging such employee, irrespective of whether other employees who violated any provision of this Article are disciplined.

The Union agrees to encourage employees violating this Article to return to work.

It is agreed that there shall be no lockouts by the Employer during the period of this Agreement.

3.2 All workers must do all in their power to assist in all matters that are to the best interest of the Employer.

ARTICLE 4

DISCIPLINE, DISCHARGE OR SUSPENSION

4.1 **Discipline for Just Cause:** The Employer may discipline, discharge or suspend a regular employee for just cause. As long as the Employer follows its disciplinary policy, as set forth in this Agreement, just cause shall be deemed to have existed for all disciplinary actions.

4.2 **Minor Rule Violations:** For minor rule violations, a regular employee shall be subject to discharge if the employee has accumulated one (1) previous written warnings and committed another rule violation, regardless of the nature of the offenses, within a nine (9) month period.

4.3 **Major Rule Violations:** Employees committing a major rule violation shall be subject to immediate discharge without a prior warning. The major rule violations shall include, but are not limited to the following: threats or assaults of a serious nature towards another employee, supervisor, or management personnel; willful, careless, or negligent misuse, damage (including mislabeling of product), or destruction of Company property, property of another employee, or property of a customer; violation of the Employer's Drug and Alcohol Policy; violation of the Employer's Harassment Policy; carrying unauthorized passengers; insubordination, including refusal to obey the order of an immediate supervisor; any form of dishonesty or theft; recklessness; discourtesy to customers; violation of Company rules or other serious misconduct that is sufficient, in the Employer's judgment

and discretion, to justify discharge or suspension without prior written warning.

4.4 Right to Protest Warning Notice or Discharge: An employee may request an investigation of his discharge, suspension, or warning notice. Any protest of an employee's discharge, suspension, or warning notice shall be presented to the Employer in accordance with Article 16, Grievance Procedure, and if not presented within such a manner, the right to protest shall be waived.

4.5 Written Notice of Termination: The Employer shall give to a discharged employee a written notice of termination, with a copy to the Union.

ARTICLE 5

RIGHTS OF THE PARTIES

5.1 Unless otherwise expressly restricted by a specific provision of this Agreement, the Employer shall have the sole and exclusive right, at its own discretion, to exercise the following rights, which are not meant to be exclusive:

To direct and manage its business; to determine all selling, pricing, advertising and financial policies and methods, products and schedules of production; to install new machinery, methods, materials, or processes, or change or eliminate existing machinery, methods, materials, or processes; to direct the work force; to hire, assign, promote, transfer and lay off employees; to add or discontinue processes or operations, in whole or in part, temporarily or permanently; to suspend, demote, discipline, or discharge employees for just cause (subject to the Grievance Procedure in Article 16); to determine and change, at its sole discretion, the number of locations, relocations, and the nature of its operations; to buy product from whatever sources whenever it deems necessary; to assign non-bargaining unit employees to perform work covered by this Agreement on an emergency or incidental basis when the Employer determines that it is necessary for efficient operations or other business considerations; to take whatever action is either necessary or advisable to determine, manage and fulfill the mission of the Employer; to adopt Company rules and regulations from time to time which are not inconsistent with the terms of this Agreement. Such rules as adopted are subject to change, additions, or deletions by the Employer.

In addition to the specific rights set forth above, it is agreed and understood that the Employer reserves all rights, powers, privileges, except those rights specifically restricted by specific provisions of this Agreement.

5.2 The Union has all rights which are specified in this Agreement and in any exhibits which are made a part of this Agreement, and retains all rights granted by law, except as such rights may be limited by provisions of this Agreement.

ARTICLE 6

WAGE SCALE

6.1 The following is a minimum scale of wages mutually agreed upon by both parties to this Agreement:

WAGE RATES PER HOUR

Performance based wages are as follows:

	<u>High</u>	<u>Medium</u>	<u>Low</u>
Packaging:	\$9.50	\$8.50	\$8.00
Palletizers:	\$9.50	\$8.50	\$8.00

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ARTICLE 7

HOURS OF WORK

7.1 The normal workweek for regular employees shall consist of forty (40) hours of work, normally consisting of five (5) eight (8) hour days or four (4) ten (10) hour days. Regular employees shall normally be scheduled for not less than two (2) consecutive days off per week.

7.2 All work over eight (8) hours per day (or ten [10] hours when a four [4] ten [10] hour workweek is in effect) or forty (40) hours per week shall be paid at the rate of time and one-half (1-1/2). However, employees missing any work during the workweek (excluding layoffs) shall not be entitled to daily overtime during that workweek, but shall be paid time and one-half (1-1/2) only for work in excess of forty (40) hours in that week. In computing overtime pay, an employee shall be paid to the nearest one-fourth (1/4th) of an hour. Paid but un-worked time will not be counted toward the calculation of weekly overtime.

7.3 Employees shall not be compelled to exceed one (1) hour for unpaid lunch. In compliance with past practice, the Employer will continue to grant fifteen (15) minute paid rest periods during the first and second half of each shift.

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Deleted: 7.5 . The overtime rate for employees working on a second or third shift will include applicable shift premiums.¶

7.6 No employee's scheduled day off may be changed without two (2) calendar days' notice, except in case of business emergency or by payment of time and one-half (1-1/2) on the scheduled day off.

7.8 Employees who are unable to report for work as scheduled, including absences due to illness or injury, are required to directly contact their supervisor or the leadman on duty if the supervisor is not available, prior to the commencement of their shift. Employees may also meet this requirement by leaving a voice mail for their supervisor. However, the employee will still be required to contact their supervisor directly later that same day to report the nature of the illness or injury, anticipated date of return and other relevant matters.

ARTICLE 8

PHYSICAL EXAMINATIONS

8.1 The Employer shall pay the cost of necessary physical examinations required by any government agency for employees whose assignments require such examination, and for initial examination of employees transferred to such assignments, provided the employee goes to the Company doctor. The Employer reserves the right to require physical examinations upon initial employment and at reasonable intervals thereafter. The Employer reserves the right to select its own medical examiner or doctor.

ARTICLE 9

UNIFORMS

9.1 Drivers and employees must be neat and clean at all times. The Employer will furnish each employee work clothing if determined by the Employer to be necessary. Work clothing is defined as coveralls, overalls, or pants and shirts. The Employer shall be responsible for the cost of laundering work clothing provided by the Employer. Work clothing provided by the Employer must be returned upon termination of employment or the cost of such work clothing will be deducted from the employee's final check. Protective aprons will be provided by the Employer to employees who are not furnished uniforms. The Employer will be responsible for the cost of cleaning aprons provided by the Employer.

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Deleted: 7.7 Distribution of Overtime and Available Weekend Work for the Plant:¶

¶ A. Regular employees may bid on available work schedules or shifts during the months of February through September. Bids must be submitted within three (3) working days from posting. The senior qualified employee will be awarded the bid. An employee who successfully bids for an available work schedule or shift must continue on that work schedule or shift for at least six (6) months, or until the shift or work schedule is discontinued, whichever comes first. For bidding purposes, schedules and starting times that are not on a fixed regular forty (40) hour per work basis shall be referred to as "utility." A shift is deemed discontinued when a regular employee is paid less than twenty-four (24) hours in a workweek (Monday through Sunday). A work schedule is deemed discontinued after no work is scheduled, worked, or paid for a period of seven (7) consecutive calendar days. Regular employees may thereafter use their seniority in accordance with Article 13.4.¶

¶ B. Available weekend work is work on Saturday and Sunday which is not performed by an employee on a bid basis, or through utility assignment. Each Tuesday at 8:00 a.m., the Employer will post a sign up sheet for available weekend work. The sign-up sheet will be removed at 3:00 p.m. each Wednesday. The available weekend work will be assigned to the senior qualified employee. However, employees who indicate that they are available by signing up must be available and on-call for the day or days specified. Employees who have signed up for available weekend work, and who are either not available or do not answer the Employer's telephone call, will be subject to disciplinary action.¶

¶ C. Except as provided above, overtime and available weekend work shall be distributed by the Employer in order to maintain efficient operation. The Employer has the right to require overtime and weekend work, and employees may not refuse such assignment, unless excused by the Employer.

ARTICLE 10

VACATIONS

10.1 Any employee who has been in the employ of the Employer for a period of one (1) year shall receive one (1) week of vacation with pay, provided the employee has worked a minimum of eleven hundred (1,100) hours in their anniversary year. Employees who meet this requirement will receive a pro-rata vacation based upon the number of hours worked in the first partial calendar year divided by two thousand (2,000) times forty (40) hours, up to a maximum of one (1) week (40 hours). Thereafter, the employee's vacation benefit will be computed on a calendar year basis.

10.2 After one (1) complete calendar year of continuous service, employees shall accrue two (2) weeks' vacation with full pay.

10.3 After nine (9) complete calendar years' continuous service, employees shall accrue three (3) weeks' vacation with full pay.

10.4 After seventeen (17) complete calendar years' continuous service, employees shall accrue four (4) weeks' vacation with full pay.

10.5 Full vacation pay shall be paid to all regular employees who have been paid for two thousand (2,000) hours in their vacation year. If for any reason a regular employee with at least one (1) year of Company seniority is paid for less than two thousand (2,000) hours in any year, such employee shall be paid pro-rata vacation pay, provided the employee worked a total of eleven hundred (1,100) hours, which will constitute the annual service requirement for eligibility. Such pro-rata vacation pay shall be computed in accordance with the following formula:

Number of Hours Employee Was Paid For During the Year <u>in Question</u>	X	Amount of Vacation Pay Employee Would Be Entitled to If Employee Worked the Full Year	=	Amount to Be Paid to Employee
2,000				

10.6 Time lost up to sixty (60) days as a result of injury or illness shall be considered as time worked when computing vacation hours.

10.7 If a holiday occurs during an employee's vacation, the Employer shall grant one (1) additional day off in lieu of the holiday. If the Employer does not grant the extra day of vacation in lieu of a holiday, the vacationing employee will receive one day's straight-time pay pursuant to the scheduled straight-time work hours applicable to the vacationing employee's classification and the terms of Article 12.2.

10.8 All vacations must be scheduled subject to the operational requirements of the Employer. Recognizing that the Employer must have qualified employees on duty at all times, vacation preference shall be given on the basis of seniority. A vacation schedule shall be posted by January 1 of each year, and all employees must select their vacation period by February 15. Up to two (2) employees may schedule vacation in a particular week. However, at the Employer's sole discretion, more than two (2) employees may be allowed to take their vacation in a particular week. Employees with more than two (2) weeks' vacation may only choose two (2) weeks during the months of May through August, until all employees have had an opportunity to select, and the two (2) weeks selected must be at least three (3) weeks apart, unless otherwise approved by the Employer. After February 15, vacation schedules may only be modified by mutual consent, except in case of business emergencies, and in no event may an employee use his seniority to bump a junior employee from his scheduled vacation period.

10.9 Earned vacation benefits shall not be accumulated but must be taken by January 31 of the succeeding anniversary year.

10.10 No employee will be permitted to work in lieu of his vacation, except by mutual agreement between the employee and the Employer.

10.11 Employees with two (2) weeks or more of vacation will be allowed to use one (1) week on a day-to-day basis with the approval of the Employer, or provided the employee gives the Employer notice at least ten (10) calendar days in advance.

10.12 In the event of termination of employment after one (1) year of service, vacation shall be pro-rated for time worked, provided that any employee who has been discharged for cause or who quits without giving five (5) working days' notice shall not be entitled to pro-rated vacation pay. No employee shall be discriminated against for giving said notice of termination.

ARTICLE 11

TIME CLOCKS

11.1 The Employer shall install and maintain a time clock for the systematic recording of each employee's time. All time clock records shall be available to the Union during normal working hours for checking.

11.2 Payroll shall be paid by actual time on time cards as adjusted to reflect eating periods. Time after eight (8) hours shall not be computed, unless it exceeds seven (7) minutes in any one (1) day.

ARTICLE 12

HOLIDAYS

12.1 The following days shall be considered as holidays:

New Year's Day	Labor Day
Memorial Day	Thanksgiving Day
July 4th	Christmas Day

12.2 If any of the holidays fall on Sunday, it shall be observed on Monday. All eligible regular employees shall receive regular straight-time pay if the holiday is not worked, and holiday pay in addition to pay for all hours worked if they perform work on the holiday. If the employee is scheduled to work four (4) ten (10) hour days per week, "regular straight-time pay" shall equal pay for ten (10) hours of straight time. If the employee is scheduled to work five (5) eight (8) hour days per week, "regular straight-time" shall equal pay for eight (8) hours of straight time.

12.3 In order to qualify for holiday pay, the employee must be classified as a regular employee and must be at work on the Employer's regularly scheduled day prior to and after the said holiday, unless absence from work is due to injury or illness supported by a doctor's certificate and/or excused by the Employer.

12.4 Employees who work less than a full week on a continual basis, who have completed their probationary period, shall be entitled to holiday pay if they work at least one (1) day during the week of the holiday and all other days for which they are scheduled during the holiday week.

ARTICLE 13

SENIORITY

13.1 Definition: Seniority is defined as the employee's length of service with the Employer, and it shall be computed from the time of his employment within the bargaining unit.

13.2 Probationary Employees: An employee is probationary his first one hundred twenty (120) days of actual work. At the end of the one hundred twenty (120) day period, the employee's seniority date shall date back to the original date of hire.

13.3 Seniority List: A seniority list shall be prepared by the Employer twice each year, posted on the bulletin board and a copy mailed to the Local Union.

13.4 The principles of seniority shall apply whenever practical in cases of layoffs,

Deleted: A probationary employee shall never be transferred, promoted, retained during work force reductions, or returned to work after layoff in preference over a non-probationary employee.¶

rehire, vacation preference, all other qualifications being equal. The Employer shall be the sole judge of employees' qualifications but shall not act arbitrarily or capriciously.

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13.5 Termination of Seniority: An employee's seniority and employment may be terminated for one of the following reasons:

- A. Discharge;
- B. Resignation;
- C. Absence in excess of one (1) year due to on- or off-the-job illness or injury (unless further extended by mutual agreement and if a mutual agreement cannot be reached, the matter may be made the subject of the Grievance Procedure). In case of time lost as a result of an accident or injury recognized by the Worker's Compensation Board as suffered during the course of employment with the Employer, this period shall be extended in accordance with State law;
- D. Layoff due to lack of work in excess of three (3) months;
- E. Failure to respond to recall within seven (7) days' notice of mail to the employee's last known address;
- F. Unauthorized absence from work for two (2) consecutive working days; termination occurs at 5:00 p.m. on the second day;
- G. Failure to return to work in accordance with the terms of an approved leave of absence;
- H. Failure to report for work by second regular workday following physician's release to return to work.

13.6 For purposes of this paragraph, any military service will not result in the loss of seniority (as described by the USERRA.)

HEALTH AND WELFARE

The Employer will contribute \$350 to a health care plan negotiated by the Employer.

ARTICLE 14

Pension

- 10 - DELUXE ICE CREAM CO./GENERAL TEAMSTERS LOCAL 324

PALLETIZERS AND PACKAGERS

Deluxe Ice Cream/Palletizers & Local 324 - Exp. 7-31-11

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¶ 14.2 Effective September 1, 2009, the Employer shall contribute 89% as the Company's contribution to the Kaiser Health Plan - Option #2 as described in the 7.31.08 meeting. Any difference between 89% and the cost of the plan will be the responsibility of the Employee and will be deducted from their payment.¶

¶ 14.3 Effective September 1, 2010, the Employer shall contribute 88% as the Company's contribution to the Kaiser Health Plan - Option #2 as described in the 7.31.08 meeting. Any difference between 88% and the cost of the plan will be the responsibility of

Deleted: the Employee and will be deducted from their payment.¶

¶

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The Employer will establish a 401K.

ARTICLE 15.

GRIEVANCE PROCEDURE

16.1 In case of any claim of violation of any Article in this Agreement, the employee shall take the matter up with the proper foreman or department head within three (3) working days of the date that the employee either knew or should have known of the occurrence which is alleged to be a violation of such Article; and if no settlement can be reached within three (3) working days thereafter, the grievance shall be reduced to writing, and the Union representative shall have seven (7) working days within which to adjust said claim violation with higher Employer authority, exclusive of Saturdays, Sundays, or holiday periods. If the aforementioned procedure and time limits are not followed, the right to protest such grievance shall be waived and abandoned. The above referenced time limits may be extended by mutual agreement between the Employer and the Union. The Employer shall have seven (7) working days within which to respond to the grievance.

16.2 If the grievance cannot be settled between the Union representative and the Company representative, by mutual agreement the grievance shall be submitted to a joint conference board for hearing. The joint conference board shall consist of two (2) members appointed by the Employer and two (2) members appointed by the Union. Neither the Employer members or the Union members shall be connected with the Employer or the Local Union involved in the dispute. The joint conference board shall convene as soon as practicable of submission to it of any matter in dispute, and controversies shall be heard in such manner as the board may determine. The decision of the board, shall be by majority vote. In the event of failure of the board to decide any matter submitted to it, the board shall be dismissed, and the grievance may proceed to the next step.

16.3 Arbitration: If the grievance is not settled in accordance with the foregoing procedure, either party may refer the grievance to binding arbitration within ten (10) working days. The parties shall attempt to agree upon an arbitrator within ten (10) calendar days after receipt of notice of referral, and in the event the parties are unable to agree upon an arbitrator within said ten (10) day period, the parties shall immediately jointly request the Federal Mediation and Conciliation Service to submit a panel of seven (7) arbitrators having their principal office located in Oregon or Washington. Either party may reject one (1) entire panel. The grieving party shall strike the first name, the other party shall then strike a second name, the first party a third name, and other party a fourth name, and the remaining person shall be notified of his selection by a joint letter from the Employer and the Union, requesting that he set a time and place, subject to the availability of the Employer and Union representative.

16.4 The arbitrator shall act in a judicial, not legislative, capacity and shall have no right to recommend to amend, modify, nullify, ignore, add to, or subtract from the provisions of this Agreement. The arbitrator shall only consider and make a decision with

Deleted: 15.1. The Employer shall pay to the Pacific Coast Benefits Trust for all employees covered by this Agreement who have been in the employment of the Employer for a minimum of one (1) year after the date they attained seniority status, the sum of forty-three cents (\$.43) per compensable hour.¶

¶ 15.2 The total amount due to the Pacific Coast Benefits Trust for each calendar month shall be remitted in a lump sum not later than ten (10) days after the last business day of each month. The Employer hereby acknowledges that it has received a true copy of the Pacific Coast Benefits Trust and it is understood and agreed that the Employer accepts the terms and conditions of this Trust and shall be considered a party thereto. The Employer further agrees that the Employer Trustees named in the Pacific Coast Benefits Trust and additional Employer Trustees serving pursuant to the terms of said Trust, and their successors in Trust, are and shall be its representatives and consents to be bound by the actions and determinations of the Trustees.¶

¶

respect to the specific issue submitted, and shall have no authority to make a decision on any other issue not so submitted to him. In the event the arbitrator finds a violation of the terms of this Agreement, he shall fashion an appropriate remedy. In any award involving back pay and benefits, the arbitrator's award will be limited to straight time minimums and applicable shift premiums and will not include overtime. In addition, the award will be reduced for any interim earnings and benefits, including unemployment compensation. The arbitrator shall be without power to make a decision contrary to, inconsistent with, or modifying or varying in any way the application of laws and rules and regulations having the force and effect of law or any city ordinance. The arbitrator shall submit in writing his decision within thirty (30) calendar days following the close of the hearing or the submission of briefs by the parties, whichever is later, unless the parties agree to a written extension thereof. The decision shall be based solely upon his interpretation of the meaning or application of the express terms of this Agreement to the facts of the grievance presented.

16.5 The expense and compensation of the arbitrator shall be borne ~~both Parties equally~~. The expense, wages, and any other compensation of any witnesses called before the arbitrator shall be borne by the party calling such witnesses and each party shall be responsible for the costs of their own representative.

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Deleted: designated by the Arbitrator.

16.6 The time limits set forth above may be extended by mutual written agreement.

ARTICLE 16

SHARP ROOM

17.1 Adequate clothing shall be furnished for all who work in the Sharp Room. No employee shall be required to work in the Sharp Room for more than fifty (50) minutes each hour.

ARTICLE 17

JURY DUTY

18.1 The Employer shall reimburse an employee for only loss of wages caused by such employee performing jury duty for a maximum of ten (10) working days during a calendar year.

ARTICLE 18

SICK LEAVE

19.1 Employees shall accumulate forty (40) hours of sick leave with pay in any one (1) contract year. Sick leave shall accumulate at the rate of three and one-third (3-1/3) hours per month of full-time service. Employees who work less than a full week on a continual basis shall accrue sick leave benefits on a pro-rata basis.

19.2 Beginning with the first workday of any hospitalized illness or injury, the succeeding workdays lost during the initial seven (7) calendar day period shall be paid for, if sufficient time has been accumulated. Beginning with the second scheduled working day of any non-hospitalized illness or injury, the succeeding workdays lost during the initial seven (7) calendar day period shall be paid for, if sufficient time has accumulated. Such leave shall terminate when health and welfare time loss payments begin.

19.3 Amount of Pay: Payment for sick leave shall be for an eight (8) hour day, unless an employee is regularly scheduled to work four (4) ten (10) hour days at straight pay. If an employee is regularly scheduled to work four (4) ten (10) hour days, payment for sick leave shall be for ten (10) hours of straight time. Employee's sick leave pay shall not exceed forty (40) hours of straight-time pay per calendar workweek.

19.4 Sick Leave Bank: Sick leave allowance shall be used only for bona fide illness or injury of an employee on such employee's scheduled workdays. Any unused sick leave shall be accumulated into a sick leave bank of not more than two hundred eighty (280) hours, said bank to be used for future illness or injury of the employee as such employee's needs may require. Sick leave shall be deducted from the accumulated bank.

19.5 An employee who is collecting Workers' Compensation temporary disability benefits shall not receive sick leave benefits as provided herein.

19.6 The Employer may, at its discretion and for legitimate reasons, require employees who are absent due to illness/injury, to provide a doctor's note or release.

19.7 Sick leave benefits are not convertible to cash or any form of remuneration, and accumulated but unused sick leave benefits are forfeited when service with the Employer is terminated.

19.8 Employees who have accumulated two hundred eighty (280) hours in their sick leave bank shall continue to accumulate sick leave in accordance with Section 19.1. Such employees shall be compensated for all hours above two hundred eighty (280) as determined on December 31 of each year, payable in the first paycheck in January for December hours.

ARTICLE 19

FUNERAL LEAVE

20.1 Any regular employee covered by this Agreement who suffers a death in such employee's immediate family shall be allowed up to two (2) working days off with pay for the purpose of attending the funeral and/or assisting in the funeral arrangements. For the purpose of this Article, "pay" shall equal the pay the employee would have earned by working his regularly scheduled straight-time hours.

20.2 Immediate family shall be defined as wife, husband, son, daughter, mother, father, brother, sister, present mother-in-law, or father-in-law.

20.3 Any employee covered by this Agreement who suffers a death among his grandparents shall be allowed up to one (1) working day off with pay for the purpose of attending the funeral and/or assisting in the funeral arrangements.

ARTICLE 20

TRAINING

21.1 The Employer agrees that each contract year of the Agreement beginning in October through February time the Company shall post a list of one (1) position available for training on machines or pasteurizers. This training position will be available to the most qualified volunteer, who is actively employed and not on layoff status.

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21.2 It is understood that if no active employee volunteers for such training, that the Company will have no obligation to mandate such training or fill a training spot.

ARTICLE 21

PHYSICAL EXAMINATIONS

22.1 The Employer shall pay for all physical examinations of its employees who are required to take same in order to enter or continue in the employ of the Employer.

ARTICLE 22

NON-DISCRIMINATION

23.1 It is the continuing policy of the Employer, employees and the Union to comply with all federal and state equal employment opportunity laws. Whenever the male gender is used in this Agreement, it shall be construed to include male and female employees.

ARTICLE 23

ENTIRE AGREEMENT

24.1 The Employer and the Union acknowledge that during negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not covered by law in the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.

24.2 Therefore, the Employer and the Union for the life of this Agreement each voluntarily and unqualifiedly waive the right, and each agree that the other shall not be obligated, to bargain collectively with respect to any subject matter or matter referred to or covered in this Agreement, or any matter not referenced or covered, even though such subjects or matters may have not been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

24.3 This Agreement constitutes the sole and entire existing agreement between the parties hereto and supersedes all prior agreements, oral or written, between the Employer and the Union, and expresses all obligations of, and restrictions imposed on the Employer during its term.

24.4 This Agreement can be altered or amended only by written agreement between the parties hereto.

ARTICLE 24

SAVINGS CLAUSE

25.1 In the event that any provision of this Agreement shall be determined to be illegal or in violation of any federal or state law or regulation, whether by judicial or administrative determination, that portion of the Agreement shall be deemed excised from this Agreement, and all other portions, unless dependent upon the excised portion, shall

remain in full force and effect.

- 16 - DELUXE ICE CREAM CO./GENERAL TEAMSTERS LOCAL 324
PALLETIZERS AND PACKAGERS
Deluxe Ice Cream/Palletizers & Local 324 - Exp. 7-31-11

EXHIBIT "5"

000138

ARTICLE 25

DURATION OF AGREEMENT

26.1 This Agreement shall be effective from _____ and from year to year thereafter, unless either party to this Agreement serves notice as provided for herein. If either party wishes to modify or terminate this Agreement, it shall serve notice of such intention upon the other party sixty (60) days prior to the expiration or subsequent anniversary date. If any such notice to modify or terminate is served, the Union shall be free to strike, or the Employer to lockout after the expiration date of subsequent anniversary date, provided, however, that before any strike or lockout is initiated, there shall be at least one (1) joint meeting between the parties with a representative of the Federal Mediation and Conciliation Service.

Deleted: August 1, 2008 until July 31, 2011.

26.2 The individuals signing this Agreement in their official capacity hereby personally guarantee and warrant their authority to act for and bind the representative parties or organization who their signatures purport to represent.

For the Employer:

For the Union:

DELUXE ICE CREAM COMPANY

**GENERAL TEAMSTERS LOCAL
UNION NO. 324**

By: _____

By: _____

Date: _____

Date: _____

LETTER OF UNDERSTANDING

DRUG AND ALCOHOL POLICY

A. The Employer has always had a strong commitment to provide a safe workplace for its employees and to establish programs promoting high standards of employee health. Consistent with that commitment, the Employer and Union have agreed to this Drug and Alcohol Policy to establish and maintain a safe and productive work environment for all employees. Every employee will be provided a copy of this policy. Complying with it is a condition of employment. This Drug and Alcohol Policy applies to all employees of the Company. Any employee questions regarding the Company's Drug and Alcohol Policy should be directed to Norma Morlock.

B. The buying, selling, transportation, possession, or use of intoxicants, any controlled substances as defined by law, or any "mood-altering" substances while on Company property or vehicles, or during work hours, including meal and rest periods, is prohibited.

C. Reporting for work under the influence of intoxicants, any controlled substance as defined by law, or any "mood-altering" substance is prohibited. An employee is considered to be under the influence if a prohibited substance is present in the body at or beyond the agreed upon threshold limits as provided in Section N. For those prohibited substances not covered by the Department of Transportation Regulations, an employee will be considered to be under the influence if the prohibited substance is present in the body.

D. Employees utilizing any prescribed medication must immediately report this treatment to their supervisor so a determination may be made regarding the effect of the prescribed medication on the employee's ability to safely and properly perform his job.

E. The Employer may require that the employee immediately submit to a blood, urine or Breathalyzer test where:

1. The Employer has reasonable cause to believe that an employee is in violation of this drug and alcohol policy;
2. An employee has incurred an on-the-job injury;
3. An employee is involved in an accident;
4. An employee is otherwise eligible for promotion;
5. Required by federal or state regulations;

6. As part of the Employer's Random Drug Testing Program which applies to all employees and will be administered consistent with the regulations applying to the Employer's truck drivers.

Reasonable cause shall be defined as suspicion based upon observations that the Employer can describe concerning the appearance, unusual behavior, speech, breath odor, body symptoms or paraphernalia of an employee, which are indications of drug use, impairment or intoxication.

F. If a test is requested, employees are required to cooperate including, but not limited to, executing appropriate documentation or forms, appearing for the test at the time and location specified and cooperating with testing personnel. The Employer will compensate employees for actual time required for testing. However, any employee refusing to submit to a required test shall be taken off the clock effective with the time of the Employer's request. If the test results are negative, the employee will be immediately reinstated in his previous position with full back pay provided disciplinary action was not otherwise warranted.

G. Testing shall be done by a laboratory licensed by the State of Oregon, in accordance with standards disseminated by the National Institute of Drug Abuse and Department of Transportation Rules.

H. Reporting of test results shall be handled discreetly between the medical facility or laboratory and the Employer. Results shall be reported to the Employer according to the Department of Transportation Rules.

I. Results of tests performed under this policy will be considered medical records and held confidential to the extent permitted by law.

J. The Employer reserves the right to conduct searches of Company property, lockers, vehicles, or equipment at any time or place. Where the Employer has a reasonable suspicion that an employee is in violation of the Employer's Drug and Alcohol Policy, the Employer may request that the employee submit to a reasonable search.

K. Violation of the Employer's Drug and Alcohol Policy, or refusal to submit to a required test or search, will subject an employee to immediate discharge. This will include providing adulterated, substituted, tampered with or diluted samples, refusing to complete proper documentation and consent forms or similar conduct.

L. Employees who have alcohol or drug problems are required to immediately notify the Employer and the Union. As a limited exception to "K" above, any employee who does so will be immediately placed on a leave of absence without pay in order to enter an alcohol or drug rehabilitation program. Upon satisfactorily completing this program

within forty-five (45) days, the employee will be reinstated to his former position. During the next eighteen (18) to sixty (60) months following reinstatement, the employee consents to be tested for intoxicants, controlled substances, or mood-altering substances at any time, with or without cause. Any subsequent violation of the Employer's Drug and Alcohol Policy shall be grounds for immediate discharge. An employee who seeks help voluntarily as contemplated by this paragraph must do so and inform the Company prior to the random selection for or prior to any cause or circumstance giving rise to the requirement for or the administration of a drug and/or alcohol test covered by this Policy.

M. The Employer reserves the right to test job applicants for controlled substances or mood-altering substances at any time, with or without cause, as the Employer determines appropriate.

N. The National Institute of Drug Abuse and Department of Transportation standards shall be used to determine threshold limits for prohibited substances.

For the Employer:

DELUXE ICE CREAM COMPANY

By: _____

Date: _____

For the Union:

**GENERAL TEAMSTERS LOCAL
UNION NO. 324**

By: _____

Date: _____

LETTER OF UNDERSTANDING

In order for employees covered under the Collective Bargaining Agreement between Teamsters Local 324 and deluxe Ice Cream Company, Palletizers and Packagers Contract, to better understand the layoff and recall provisions of the Contract as it applies to those employees who have lost seniority, it is agreed as follows:

1. A seniority list will be posted on the bulletin board on a monthly basis.
2. While employees on layoff for three (3) months have no seniority, the Employer when hiring in this classification should notify the laid off employees at their last known address of any openings,.
3. The laid off employee shall have the obligation to advise the Employer that he/she desires to come back as a new hire,.
4. The Employer shall have the absolute right as to which employee to rehire, but will in making such decision consider such things as 1) good work performance, 2) attendance, and 3) compliance with work rules.

It is understood that nothing in this Letter of Understanding changes, alters or diminishes the Employers rights outlined in Article 13 of the Collective Bargaining Agreement.

For the Employer:

For the Union:

DELUXE ICE CREAM COMPANY

**GENERAL TEAMSTERS LOCAL
UNION NO. 324**

By: _____

By: _____

Date: _____

Date: _____

AGREEMENT

between

DELUXE ICE CREAM COMPANY

and

GENERAL TEAMSTERS LOCAL NO. 324

August 1, 2008 – July 31, 2011

**MACHINE OPERATORS, FORKLIFT, SALESMEN,
LOADERS & CHECKERS, DRIVERS AND MAINTENANCE**

Deluxe Ice Cream Co./General Teamsters Local 324
Machine Operators, Forklift, Etc. [Aug. 1, 2008 through Jul 31, 2011]
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EXHIBIT "5"

000144

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AGREEMENT

THIS AGREEMENT, made and entered into by and between DELUXE ICE CREAM COMPANY, Salem, Oregon, hereinafter referred to as the "Employer", and GENERAL TEAMSTERS LOCAL NO. 324, hereinafter referred to as the "Union", is made and entered into for the purpose of fixing the scale of wages, schedule of hours, and working conditions of all employees of the Employer employed in the classifications set forth in this Agreement.

And it is hereby agreed by the parties that the terms of this Agreement are as follows:

ARTICLE 1

UNION SECURITY AND DUES CHECK-OFF

1.1 The Employer recognizes the Union as the sole collective bargaining agent only for employees employed in job classifications specified in Article 6 of this Agreement.

1.2 All other classifications and employees not specifically included in Article 1.1 shall be excluded from coverage under this Agreement, including but not limited to supervisors as defined by the National Labor Relations Act, as amended, office clerical, and administrative employees, and all employees covered by the palletizers and packager's agreement.

1.3 All employees subject to this Agreement who are not already members of the Union if chosen by the employee, can become members of and maintain membership in the Union after the thirtieth (30th) day following the beginning of employment or the effective date of this Agreement, whichever is later. All employees subject to this Agreement shall continue membership in the Union as a condition of continued employment.

1.4 The Union agrees that it will make membership in the Union available to all employees subject to this Agreement on the same terms and conditions as are generally applicable to other members of the Union, and further, that membership in the Union will not be denied or terminated for any reasons other than the failure of any employee subject to this Agreement to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or attaining membership in the Union.

1.5 The Union agrees that written notice shall be given to the Employer at least seven (7) calendar days before any employee subject to this Agreement is required to be removed from his employment by reason of his failure to become or remain a member of the Union, as required by this Article. In the event said employee reinstates within the prescribed seven (7) calendar days from notification, he shall not be deprived of any of the provisions set forth in this Agreement. Before sending the Employer a request to terminate an employee under this Article, the employee shall first be given notice in writing by the Union.

1.6 The Employer agrees to notify the Union in writing within seven (7) days (excluding Saturdays, Sundays, and holidays) from the date of the first employment of any employee subject to this Agreement of the name of such employee, his hire date, his social security number, address, and telephone number.

1.7 The Employer agrees to deduct monthly from the wages of each employee covered by this Agreement uniform initiation fees and periodic dues owing to the Union as a result of membership therein, upon the individual authorization for such deductions.

The Union shall furnish the Employer monthly (but not later than the first day of each month) a record of those for whom deductions are to be made and the amounts of the deductions.

1.8 The Union shall indemnify, defend, and hold the Employer harmless against any and all claims, demands, suits, or other forms of liability that shall arise out of or result from action taken by the Employer for the purpose of complying with this Article.

ARTICLE 2

DEFINITION OF EMPLOYMENT CLASSIFICATIONS

2.1 **Probationary Employee:** The probationary period for new employees is one hundred twenty (120) days of actual work as defined in Article 13, Seniority. With the exception of pension contributions, employees are not eligible for any employee benefits during their probationary period, including holiday pay, vacation pay, health and welfare, sick leave, funeral leave, and jury duty pay.

Probationary employees may be terminated or laid off at any time by the Employer at its sole discretion. The employee or the Union shall not have recourse to Article 16, Grievance Procedure, over his termination or layoff.

2.2 **Regular Employee:** A regular employee is an individual who has successfully completed the probationary period, and who works in a classification covered by this Agreement. Provided they meet the other necessary qualifications, regular employees are eligible for all of the employee benefits.

ARTICLE 3

NO STRIKE/NO LOCKOUT

3.1 There shall be no strikes, sympathy strikes, work stoppages, picketing, or interruption or impeding of work. No officer or representative of the Union shall authorize, instigate, aid, or condone any such activities. No employee shall participate in any such activities. Violation by any employee of any provision of this Article shall constitute proper cause for

discharging such employee, irrespective of whether other employees who violated any provision of this Article are disciplined.

The Union agrees to encourage employees violating this Article to return to work.

It is agreed that there shall be no lockouts by the Employer during the period of this Agreement.

3.2 All workers must do all in their power to assist in all matters that are to the best interest of the Employer.

ARTICLE 4

DISCIPLINE, DISCHARGE OR SUSPENSION

4.1 **Discipline for Just Cause:** The Employer may discipline, discharge or suspend a regular employee for just cause. As long as the Employer follows its disciplinary policy, as set forth in this Agreement, just cause shall be deemed to have existed for all disciplinary actions.

4.2 **Minor Rule Violations:** For minor rule violations, a regular employee shall be subject to discharge if the employee has accumulated one (1) previous written warnings and committed another rule violation, regardless of the nature of the offenses, within a nine (9) month period.

4.3 **Major Rule Violations:** Employees committing a major rule violation shall be subject to immediate discharge without a prior warning. The major rule violations shall include, but are not limited to the following: threats or assaults of a serious nature towards another employee, supervisor, or management personnel; willful, careless, or negligent misuse, damage (including mislabeling of product), or destruction of Company property, property of another employee, or property of a customer; violation of the Employer's Drug and Alcohol Policy; violation of the Employer's Harassment Policy; carrying unauthorized passengers; insubordination, including refusal to obey the order of an immediate supervisor; any form of dishonesty or theft; recklessness; discourtesy to customers; violation of Company rules or other serious misconduct that is sufficient, in the Employer's judgment and discretion, to justify discharge or suspension without prior written warning.

4.4 **Right to Protest Warning Notice or Discharge:** An employee may request an investigation of his discharge, suspension, or warning notice. Any protest of an employee's discharge, suspension, or warning notice shall be presented to the Employer in accordance with Article 16, Grievance Procedure, and if not presented within such a manner, the right to protest shall be waived.

4.5 **Written Notice of Termination:** The Employer shall give to a discharged employee a written notice of termination, with a copy to the Union.

ARTICLE 5

RIGHTS OF THE PARTIES

5.1 Unless otherwise expressly restricted by a specific provision of this Agreement, the Employer shall have the sole and exclusive right, at its own discretion, to exercise the following rights, which are not meant to be exclusive:

To direct and manage its business; to determine all selling, pricing, advertising and financial policies and methods, products and schedules of production; to install new machinery, methods, materials, or processes, or change or eliminate existing machinery, methods, materials, or processes; to direct the work force; to hire, assign, promote, transfer and lay off employees; to add or discontinue processes or operations, in whole or in part, temporarily or permanently; to suspend, demote, discipline, or discharge employees for just cause (subject to the Grievance Procedure in Article 16); to determine and change, at its sole discretion, the number of locations, relocations, and the nature of its operations; to buy product from whatever sources whenever it deems necessary; to assign non-bargaining unit employees to perform work covered by this Agreement on an emergency or incidental basis when the Employer determines that it is necessary for efficient operations or other business considerations; to take whatever action is either necessary or advisable to determine, manage and fulfill the mission of the Employer; to adopt Company rules and regulations from time to time which are not inconsistent with the terms of this Agreement. Such rules as adopted are subject to change, additions, or deletions by the Employer.

In addition to the specific rights set forth above, it is agreed and understood that the Employer reserves all rights, powers, privileges, except those rights specifically restricted by specific provisions of this Agreement.

5.2 The Union has all rights which are specified in this Agreement and in any exhibits which are made a part of this Agreement, and retains all rights granted by law, except as such rights may be limited by provisions of this Agreement.

ARTICLE 6

WAGE SCALE

6.1 The following is a minimum scale of wages mutually agreed upon by both parties to this Agreement:

New Proposed performance based wages

	<u>High</u>	<u>Medium</u>	<u>Low</u>
<u>Foreperson</u>	<u>\$23.00</u>	<u>\$20.70</u>	<u>\$17.00</u>

4

Deluxe Ice Cream Co./General Teamsters Local 324
Machine Operators, Forklift, Etc. [Aug. 1, 2008 through Jul 31, 2011]
040671, 000001, 502038309.5

EXHIBIT "5"

000149

<u>Hardening</u>	<u>\$17.00</u>	<u>\$15.12</u>	<u>\$13.00</u>
<u>Maintenance</u>	<u>\$20.00</u>	<u>\$16.30</u>	<u>\$14.00</u>
<u>Operator</u>	<u>\$17.50</u>	<u>\$13.00</u>	<u>\$9.30</u>
<u>Driver</u>	<u>\$17.11</u>	<u>\$13.06</u>	<u>\$10.00</u>
<u>Utility</u>	<u>\$17.00</u>	<u>\$133.00</u>	<u>\$9.60</u>
<u>Packer</u>	<u>\$9.50</u>	<u>\$8.50</u>	<u>\$8.00</u>

ARTICLE 7

HOURS OF WORK

7.1 The normal workweek for regular employees shall consist of forty (40) hours of work, normally consisting of five (5) eight (8) hour days or four (4) ten (10) hour days. Regular employees shall normally be scheduled for not less than two (2) consecutive days off per week. Notwithstanding the above, the Employer retains the right to assign on non-consecutive work days that may result in less than two (2) consecutive days off per week. Further, this is not a guarantee of a forty (40) hour week.

7.2 All work over eight (8) hours per day (or ten [10] hours when a four [4] ten [10] hour workweek is in effect) or forty (40) hours per week shall be paid at the rate of time and one-half (1-1/2). However, employees missing any work during the workweek (excluding layoffs) shall not be entitled to daily overtime during that workweek, but shall be paid time and one-half (1-1/2) only for work in excess of forty (40) hours in that week. In computing overtime pay, an employee shall be paid to the nearest one-fourth (1/4th) of an hour. Paid but un-worked time will not be counted toward the calculation of weekly overtime.

7.3 Inside employees shall not be compelled to exceed one-half (1/2) hour for unpaid lunch. Drivers shall receive one-half (1/2) hour for unpaid lunch. In compliance with past practice,

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Deluxe Ice Cream Co./General Teamsters Local 324
Machine Operators, Forklift, Etc. [Aug. 1, 2008 through Jul 31, 2011]
040671, 000001, 502038309.5

<u>Deleted: WAGE RATES PER HOUR</u>			
Effective: 8/1/08 8/1/09 8/1/10			
Lead Freezer Operator; Mix Man and Vita Line Operator			
\$16.81	\$17.36	\$17.88	
Sandwich Machine Operator; Cones and Cups Machine Operator			
\$16.31	\$16.84	\$17.35	
Loaders and Checkers/Forklift			
\$16.38	\$16.91	\$17.42	
Semi-Drivers			
\$16.57	\$17.11	\$17.62	
Maintenance			
\$16.94	\$17.49	\$18.01	
Machine Operator Pool (max. 5)/Freezer			
\$11.41	\$11.78	\$12.13	
Forklift			
6.2 Break-in Rate: The following are the minimum scales of wages for employees working in the classifications covered by this Agreement, other than machine operator pool/freezer forklift employees.			
0-1,560 Straight-Time Hours of Classification Rate	70%		
1,561-3,120 Straight-Time Hours	80% of Classification Rate		
3,121-4,680 Straight-Time Hours	90% of Classification Rate		
Thereafter	Full Classification Rate		
6.3 The progression increases provided in the wage schedules shall be placed into effect at the beginning of the first pay period following the employee's completion of the required number of hours to advance to the next wage bracket.			
6.4 The above break-in rates may be accelerated at the sole discretion of the Employer.			
6.5 The wage rates set forth in th			

the Employer will continue to grant fifteen (15) minute paid rest periods during the first and second half of each shift.

7.4 Employees drawing the lower wage or employed in a lower class of work may be assigned temporarily at the option of the Employer to a higher class of work, provided that if the employee spends a majority of the hours in his workweek in the higher class of work, such employee shall receive the wage scale applicable to such work for all time spent working in the higher class. Such employee will return to the lower wage scale when returning to the lower class of work.

7.7 No employee's scheduled day off may be changed without two (2) calendar days' notice, except in case of business emergency or by payment of time and one-half (1-1/2) on the scheduled day off.

7.9 Employees who are unable to report for work as scheduled, including absences due to illness or injury, are required to directly contact their supervisor or the leadman on duty if the supervisor is not available, two hours prior to the commencement of their shift. Employees may also meet this requirement by leaving a voice mail for their supervisor. However, the employee will still be required to contact their supervisor directly later that same day to report the nature of the illness or injury, anticipated date of return and other relevant matters.

ARTICLE 8

PHYSICAL EXAMINATIONS

8.1 The Employer shall pay the cost of necessary physical examinations required by any government agency for employees whose assignments require such examination, and for initial examination of employees transferred to such assignments, provided the employee goes to the Company doctor. The Employer reserves the right to require physical examinations upon initial employment and at reasonable intervals thereafter. The Employer reserves the right to select its own medical examiner or doctor.

ARTICLE 9

UNIFORMS

9.1 Drivers and employees must be neat and clean at all times. The Employer will furnish each employee work clothing if determined by the Employer to be necessary. Work clothing is defined as coveralls, overalls, or pants and shirts. The Employer shall be responsible for the cost of laundering work clothing provided by the Employer. Work clothing provided by the Employer must be returned upon termination of employment or the cost of such work clothing will be

Deleted: 7.5 Any regular employee assigned to a second or third shift that begins between the hours of 4:00 p.m. and 2:00 a.m. shall be paid a shift premium of fifteen cents (\$.15) per hour in addition to straight-time wages for all hours worked.¶

7.6 The overtime rate for employees working on a second or third shift will include applicable shift premiums.¶

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Deleted: 7.8 Distribution of Overtime and Available Weekend Work for the Plant.¶

¶ A. Regular employees may bid on available work schedules or shifts during the months of February through September. Bids must be submitted within three (3) working days from posting. The senior qualified employee will be awarded the bid. An employee who successfully bids for an available work schedule or shift must continue on that work schedule or shift for at least six (6) months, or until the shift or work schedule is discontinued, whichever comes first. For bidding purposes, schedules and starting times that are not on a fixed regular forty (40) hour per work basis shall be referred to as "utility." A shift is deemed discontinued when a regular employee is paid less than twenty-four (24) hours in a workweek (Monday through Sunday). A work schedule is deemed discontinued after no work is scheduled, worked, or paid for a period of seven (7) consecutive calendar days. Regular employees may thereafter use their seniority in accordance with Article 13.4.¶

¶ B. Available weekend work is work on Saturday and Sunday which is not performed by an employee on a bid basis, or through utility assignment. Each Tuesday at 8:00 a.m., the Employer will post a sign up sheet for available weekend work. The sign-up sheet will be removed at 3:00 p.m. each Wednesday. The available weekend work will be assigned to the senior qualified employee. However, employees who indicate that they are available by signing up must be available and on-call for the day or days specified. Employees who have signed up for available weekend work, and who are either not available or do not show up, [2]

deducted from the employee's final check. Protective aprons will be provided by the Employer to employees who are not furnished uniforms. The Employer will be responsible for the cost of cleaning aprons provided by the Employer.

ARTICLE 10

VACATIONS

10.1 Any employee who has been in the employ of the Employer for a period of one (1) year shall receive one (1) week of vacation with pay, provided the employee has worked a minimum of eleven hundred (1,100) hours in their anniversary year. Employees who meet this requirement will receive a pro-rata vacation based upon the number of hours worked in the first partial calendar year divided by two thousand (2,000) times forty (40) hours, up to a maximum of one (1) week (40 hours). Thereafter, the employee's vacation benefit will be computed on a calendar year basis.

10.2 After one (1) complete calendar year of continuous service, employees shall accrue two (2) weeks' vacation with full pay.

10.3 After nine (9) complete calendar years' continuous service, employees shall accrue three (3) weeks' vacation with full pay.

10.4 After seventeen (17) complete calendar years' continuous service, employees shall accrue four (4) weeks' vacation with full pay.

10.5 Notwithstanding the provisions of Article 10.3 above, regular employees who, as of May 31, 1987, have ten (10) complete calendar years' continuous service shall accrue four (4) weeks' vacation with full pay for the life of this Agreement.

10.6 Full vacation pay shall be paid to all regular employees who have been paid for two thousand (2,000) hours in their vacation year. If for any reason a regular employee with at least one (1) year of Company seniority is paid for less than two thousand (2,000) hours in any year, such employee shall be paid pro-rata vacation pay, provided the employee worked a total of eleven hundred (1,100) hours, which will constitute the annual service requirement for eligibility. Such pro-rata vacation pay shall be computed in accordance with the following formula:

Number of Hours Employee Was Paid For During the Year <u>in Question</u>	X	Amount of Vacation Pay Employee Would Be Entitled to If Employee Worked the Full Year	=	Amount to Be Paid to Employee
2,000				

10.7 Time lost up to sixty (60) days as a result of injury or illness shall be considered as time worked when computing vacation hours.

10.8 If a holiday occurs during an employee's vacation, the Employer shall grant one (1) additional day off in lieu of the holiday. If the Employer does not grant the extra day of vacation in lieu of a holiday, the vacationing employee will receive one day's straight-time pay pursuant to the scheduled straight-time work hours applicable to the vacationing employee's classification and the terms of Article 12.2.

10.9 All vacations must be scheduled subject to the operational requirements of the Employer. Recognizing that the Employer must have qualified employees on duty at all times, vacation preference shall be given on the basis of seniority. A vacation schedule shall be posted by January 1 of each year, and all employees must select their vacation period by February 15. Up to two (2) employees may schedule vacation in a particular week. However, at the Employer's sole discretion, more than two (2) employees may be allowed to take their vacation in a particular week. Employees with more than two (2) weeks' vacation may only choose two (2) weeks during the months of May through August, until all employees have had an opportunity to select, and the two (2) weeks selected must be at least three (3) weeks apart, unless otherwise approved by the Employer. After February 15, vacation schedules may only be modified by mutual consent, except in case of business emergencies, and in no event may an employee use his seniority to bump a junior employee from his scheduled vacation period.

10.10 Earned vacation benefits shall not be accumulated but must be taken by January 31 of the succeeding anniversary year.

10.11 No employee will be permitted to work in lieu of his vacation, except by mutual agreement between the employee and the Employer.

10.12 Employees with two (2) weeks or more of vacation will be allowed to use one (1) week on a day-to-day basis with the approval of the Employer, or provided the employee gives the Employer notice at least ten (10) calendar days in advance.

10.13 In the event of termination of employment after one (1) year of service, vacation shall be pro-rated for time worked, provided that any employee who has been discharged for cause or who quits without giving five (5) working days' notice shall not be entitled to pro-rated vacation pay. No employee shall be discriminated against for giving said notice of termination.

ARTICLE 11

TIME CLOCKS

11.1 The Employer shall install and maintain a time clock for the systematic recording of each employee's time. All time clock records shall be available to the Union during normal working hours for checking.

11.2 Payroll shall be paid by actual time on time cards as adjusted to reflect eating

periods. Time after eight (8) hours shall not be computed, unless it exceeds seven (7) minutes in any one (1) day.

ARTICLE 12

HOLIDAYS

12.1 The following days shall be considered as holidays:

New Year's Day	Labor Day
Memorial Day	Thanksgiving Day
July 4th	Christmas Day

12.2 If any of the holidays fall on Sunday, it shall be observed on Monday. All eligible regular employees shall receive regular straight-time pay if the holiday is not worked, and holiday pay in addition to pay for all hours worked if they perform work on the holiday. If the employee is scheduled to work four (4) ten (10) hour days per week, "regular straight-time pay" shall equal pay for ten (10) hours of straight time. If the employee is scheduled to work five (5) eight (8) hour days per week, "regular straight-time" shall equal pay for eight (8) hours of straight time.

12.3 In order to qualify for holiday pay, the employee must be classified as a regular employee and must be at work on the Employer's regularly scheduled day prior to the Employer's regularly scheduled day following said holiday, unless absence from work is due to injury or illness supported by a doctor's certificate and/or excused by the Employer.

12.4 Employees who work less than a full week on a continual basis, who have completed their probationary period, shall be entitled to holiday pay if they work at least one (1) day during the week of the holiday and all other days for which they are scheduled during the holiday week.

ARTICLE 13

SENIORITY

13.1 **Definition:** Seniority is defined as the employee's length of service with the Employer, and it shall be computed from the time of his employment within the bargaining unit.

13.2 **Probationary Employees:** An employee is probationary his first one hundred twenty (120) days of actual work. At the end of the one hundred twenty (120) day period, the employee's seniority date shall date back to the original date of hire. A probationary employee shall never be transferred, promoted, retained during work force reductions, or returned to work after layoff in preference over a non-probationary employee.

13.3 **Seniority List:** A seniority list shall be prepared by the Employer twice each year,

posted on the bulletin board and a copy mailed to the Local Union.

13.4 The principles of seniority shall apply whenever practical in cases of layoffs, rehire, vacation preference, ~~all other qualifications being equal~~. The Employer shall be the sole judge of employees' qualifications but shall not act arbitrarily or capriciously. It is recognized by all parties that in applying this Article, it is essential that the Employer have the most qualified, available employee for each of the following departments: Sharp Room, Freezer, Novelty, Mix, and Driver.

Deleted: and shift preference of seniority employees.

13.5 Termination of Seniority: An employee's seniority and employment may be terminated for one of the following reasons:

- A. Discharge;
- B. Resignation;
- C. Absence in excess of one (1) year due to on- or off-the-job illness or injury (unless further extended by mutual agreement and if a mutual agreement cannot be reached, the matter may be made the subject of the Grievance Procedure). In case of time lost as a result of an accident or injury recognized by the Worker's Compensation Board as suffered during the course of employment with the Employer, this period shall be extended in accordance with State law;
- D. Layoff due to lack of work in excess of six (6) months;
- E. Failure to respond to recall within seven (7) days' notice of mail to the employee's last known address;
- F. Unauthorized absence from work for two (2) consecutive working days; termination occurs at 5:00 p.m. on the second day;
- G. Failure to return to work in accordance with the terms of an approved leave of absence;
- H. Failure to report for work by second regular workday following physician's release to return to work.

13.6 When a permanent vacancy exists as solely determined by the Employer, the Employer agrees to post a notice of the permanent vacancy in order to allow interested employees to advise the Employer of their desire to be considered for the available position. The Employer retains the right to select the most qualified individual.

ARTICLE 14

HEALTH & WELFARE

The Employer will contribute \$350 to a health care plan negotiated by the Employer.

ARTICLE 15

ARTICLE 15 THE EMPLOYER WILL ESTABLISH A 401K

ARTICLE 16

GRIEVANCE PROCEDURE

16.1 In case of any claim of violation of any Article in this Agreement, the employee shall take the matter up with the proper foreman or department head within three (3) working days of the date that the employee either knew or should have known of the occurrence which is alleged to be a violation of such Article; and if no settlement can be reached within three (3) working days thereafter, the grievance shall be reduced to writing, and the Union representative shall have seven (7) working days within which to adjust said claim violation with higher Employer authority, exclusive of Saturdays, Sundays, or holiday periods. If the aforementioned procedure and time limits are not followed, the right to protest such grievance shall be waived and abandoned. The above referenced time limits may be extended by mutual agreement between the Employer and the Union. The Employer shall have seven (7) working days within which to respond to the grievance.

16.2 If the grievance cannot be settled between the Union representative and the Company representative, by mutual agreement the grievance shall be submitted to a joint conference board for hearing. The joint conference board shall consist of two (2) members appointed by the Employer and two (2) members appointed by the Union. Neither the Employer members nor the Union members shall be connected with the Employer or the Local Union involved in the dispute. The joint conference board shall convene as soon as practicable of submission to it of any matter in dispute, and controversies shall be heard in such manner as the board may determine. The decision of the board shall be by majority vote. In the event of failure of the board to decide any matter submitted to it, the board shall be dismissed, and the grievance may proceed to the next step.

16.3 Arbitration: If the grievance is not settled in accordance with the foregoing procedure, either party may refer the grievance to binding arbitration within ten (10) working days. The parties shall attempt to agree upon an arbitrator within ten (10) calendar days after receipt of notice of referral, and in the event the parties are unable to agree upon an arbitrator within said ten (10) day period, the parties shall immediately jointly request the Federal Mediation and Conciliation Service to submit a panel of seven (7) arbitrators having their principal office located

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~~Deleted: 14.1 Effective September 1, 2008, the Employer shall contribute 90% as the Company's contribution to the Kaiser Health Plan - Option #2 has described in the 7.31.08 meeting. Any difference between 90% and the cost of the plan will be the responsibility of the Employee and will be deducted from their payment.~~

~~14.2 Effective September 1, 2009, the Employer shall contribute 89% per month as the Company's contribution to the Kaiser Health Plan - Option #2 has described in the 7.31.08 meeting. Any difference between 89% and the cost of the plan will be the responsibility of the Employee and will be deducted from their payment.~~

~~14.3 Effective September 1, 2010, the Employer shall contribute 88% as the Company's contribution to the Kaiser Health Plan - Option #2 has described in the 7.31.08 meeting. Any difference between 88% and the cost of the plan will be the responsibility of the Employee and will be deducted from their payment.~~

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~~Deleted: PENSION CONTRIBUTION~~

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~~Deleted: 15.1 The Employer shall pay into the Western Conference Teamster Pension Plan and Trust on account of each member of the bargaining unit. Effective on September 1, 2008, the Employer shall pay to Western Conference Teamster Pension Plan, for all employees covered by this Agreement for the first 2080 compensable hours each calendar year the following stated amounts. The parties intend to participate in the Western Conference of Teamsters Program for Enhanced Early Retirement (PEER) 84. Contributions required to provide the Program for Enhanced Early Retirement shall be paid on the same basis as contributions for the basic plan. The contributions required to provide the Program for Enhanced Early Retirement will not be taken into consideration for benefit accrual purposes under the Plan. The additional contribution for the PEER must at all times be 6.5% of the b...~~

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in Oregon or Washington. Either party may reject one (1) entire panel. The grieving party shall strike the first name, the other party shall then strike a second name, the first party a third name, and other party a fourth name, and the remaining person shall be notified of his selection by a joint letter from the Employer and the Union, requesting that he set a time and place, subject to the availability of the Employer and Union representative.

16.4 The arbitrator shall act in a judicial, not legislative, capacity and shall have no right to recommend to amend, modify, nullify, ignore, add to, or subtract from the provisions of this Agreement. The arbitrator shall only consider and make a decision with respect to the specific issue submitted, and shall have no authority to make a decision on any other issue not so submitted to him. In the event the arbitrator finds a violation of the terms of this Agreement, he shall fashion an appropriate remedy. In any award involving back pay and benefits, the arbitrator's award will be limited to straight time minimums and applicable shift premiums and will not include overtime. In addition, the award will be reduced for any interim earnings and benefits, including unemployment compensation. The arbitrator shall be without power to make a decision contrary to, inconsistent with, or modifying or varying in any way the application of laws and rules and regulations having the force and effect of law or any city ordinance. The arbitrator shall submit in writing his decision within thirty (30) calendar days following the close of the hearing or the submission of briefs by the parties, whichever is later, unless the parties agree to a written extension thereof. The decision shall be based solely upon his interpretation of the meaning or application of the express terms of this Agreement to the facts of the grievance presented.

16.5 The expense and compensation of the arbitrator shall be borne by both Parties equally. The expense, wages, and any other compensation of any witnesses called before the arbitrator shall be borne by the party calling such witnesses and each party shall be responsible for the costs of their own representative.

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16.6 The time limits set forth above may be extended by mutual written agreement.

ARTICLE 17

SHARP ROOM

17.1 Adequate clothing shall be supplied annually for all who work in the Sharp Room. No employee shall be required to work in the Sharp Room for more than fifty (50) minutes each hour.

ARTICLE 18

JURY DUTY

18.1 When a regular employee covered by this Agreement is called upon for jury service in any municipal, county, state, or federal court, such employee shall advise the Employer upon

22.2 Therefore, the Employer and the Union for the life of this Agreement each voluntarily and unqualifiedly waive the right, and each agree that the other shall not be obligated, to bargain collectively with respect to any subject matter or matter referred to or covered in this Agreement, or any matter not referenced or covered, even though such subjects or matters may have not been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

22.3 This Agreement constitutes the sole and entire existing agreement between the parties hereto and supersedes all prior agreements, oral or written, between the Employer and the Union, and expresses all obligations of, and restrictions imposed on the Employer during its term.

22.4 This Agreement can be altered or amended only by written agreement between the parties hereto.

ARTICLE 23

SAVINGS CLAUSE

23.1 In the event that any provision of this Agreement shall be determined to be illegal or in violation of any federal or state law or regulation, whether by judicial or administrative determination, that portion of the Agreement shall be deemed excised from this Agreement, and all other portions, unless dependent upon the excised portion, shall remain in full force and effect.

ARTICLE 24

TRAINING

24.1 The Employer agrees that each contract year of the Agreement beginning in October through February time the Company shall post a list of one (1) position available for training on machines or pasteurizers. This training position will be available to the most qualified volunteer, who is actively employed and not on layoff status.

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It is understood that if no active employee volunteers for such training, that the Company will have no obligation to mandate such training or fill a training spot.

ARTICLE 25

PHYSICAL EXAMINATIONS

25.1 The Employer shall pay for all physical examinations of its employees who are required to take same in order to enter or continue in the employ of the Employer.

ARTICLE 26

DURATION OF AGREEMENT

26.1 This Agreement shall be effective from _____ and from year to year thereafter, unless either party to this Agreement serves notice as provided for herein. If either party wishes to modify or terminate this Agreement, it shall serve notice of such intention upon the other party sixty (60) days prior to the expiration or subsequent anniversary date. If any such notice to modify or terminate is served, the Union shall be free to strike, or the Employer to lockout after the expiration date of subsequent anniversary date, provided, however, that before any strike or lockout is initiated, there shall be at least one (1) joint meeting between the parties with a representative of the Federal Mediation and Conciliation Service.

Deleted: August 1, 2008 through July 31, 2011.

The individuals signing this Agreement in their official capacity hereby personally guarantee and warrant their authority to act for and bind the representative parties or organization who their signatures purport to represent.

For the Employer:

DELUXE ICE CREAM COMPANY

By: _____

Date: _____

For the Union:

**GENERAL TEAMSTERS LOCAL
UNION NO. 324**

By: _____

Date: _____

LETTER OF UNDERSTANDING

This Letter of Understanding between General Teamsters Local No. 324 (hereinafter referred to as the "Union") and Deluxe Ice Cream Company (hereinafter referred to as the "Employer") is to clarify the intent and basis of understanding during the negotiations between the parties with respect to Article 1.

The Employer agrees that if current semi-drivers covered by this Agreement have a scheduled route that leaves additional hours below the Department of Transportation maximum and a trip becomes available that could be done within the Department of Transportation maximum, the Employer will offer such run to the current semi-drivers before it is performed by a supervisor.

For the Employer:

DELUXE ICE CREAM COMPANY

By: _____

Date: _____

For the Union:

**GENERAL TEAMSTERS LOCAL
UNION NO. 324**

By: _____

Date: _____

LETTER OF UNDERSTANDING

DRUG AND ALCOHOL POLICY

A. The Employer has always had a strong commitment to provide a safe workplace for its employees and to establish programs promoting high standards of employee health. Consistent with that commitment, the Employer and Union have agreed to this Drug and Alcohol Policy to establish and maintain a safe and productive work environment for all employees. Every employee will be provided a copy of this policy. Complying with it is a condition of employment. This Drug and Alcohol Policy applies to all employees of the Company. Any employee questions regarding the Company's Drug and Alcohol Policy should be directed to Norma Morlock.

B. The buying, selling, transportation, possession, or use of intoxicants, any controlled substances as defined by law, or any "mood-altering" substances while on Company property or vehicles, or during work hours, including meal and rest periods, is prohibited.

C. Reporting for work under the influence of intoxicants, any controlled substance as defined by law, or any "mood-altering" substance is prohibited. An employee is considered to be under the influence if a prohibited substance is present in the body at or beyond the agreed upon threshold limits as provided in Section N. For those prohibited substances not covered by the Department of Transportation Regulations, an employee will be considered to be under the influence if the prohibited substance is present in the body.

D. Employees utilizing any prescribed medication must immediately report this treatment to their supervisor so a determination may be made regarding the effect of the prescribed medication on the employee's ability to safely and properly perform his job.

E. The Employer may require that the employee immediately submit to a blood, urine or Breathalyzer test where:

1. The Employer has reasonable cause to believe that an employee is in violation of this drug and alcohol policy;
2. An employee has incurred an on-the-job injury;
3. An employee is involved in an accident;
4. An employee is otherwise eligible for promotion;
5. Required by federal or state regulations;

6. As part of the Employer's Random Drug Testing Program which applies to all employees and will be administered consistent with the regulations applying to the Employer's truck drivers.

Reasonable cause shall be defined as suspicion based upon observations that the Employer can describe concerning the appearance, unusual behavior, speech, breath odor, body symptoms or paraphernalia of an employee, which are indications of drug use, impairment or intoxication.

F. If a test is requested, employees are required to cooperate including, but not limited to, executing appropriate documentation or forms, appearing for the test at the time and location specified and cooperating with testing personnel. The Employer will compensate employees for actual time required for testing. However, any employee refusing to submit to a required test shall be taken off the clock effective with the time of the Employer's request. If the test results are negative, the employee will be immediately reinstated in his previous position with full back pay provided disciplinary action was not otherwise warranted.

G. Testing shall be done by a laboratory licensed by the State of Oregon, in accordance with standards disseminated by the National Institute of Drug Abuse and Department of Transportation Rules.

H. Reporting of test results shall be handled discreetly between the medical facility or laboratory and the Employer. Results shall be reported to the Employer according to the Department of Transportation Rules.

I. Results of tests performed under this policy will be considered medical records and held confidential to the extent permitted by law.

J. The Employer reserves the right to conduct searches of Company property, lockers, vehicles, or equipment at any time or place. Where the Employer has a reasonable suspicion that an employee is in violation of the Employer's Drug and Alcohol Policy, the Employer may request that the employee submit to a reasonable search.

K. Violation of the Employer's Drug and Alcohol Policy, or refusal to submit to a required test or search, will subject an employee to immediate discharge. This will include providing adulterated, substituted, tampered with or diluted samples, refusing to complete proper documentation and consent forms.

L. Employees who have alcohol or drug problems are required to immediately notify the Employer and the Union. As a limited exception to "K" above, any employee who does so will be immediately placed on a leave of absence without pay in order to enter an alcohol or drug rehabilitation program. Upon satisfactorily completing this program within forty-five (45) days, the employee will be reinstated to his former position. During the next eighteen (18) to sixty (60) months following reinstatement, the employee consents to be tested for intoxicants, controlled

substances, or mood-altering substances at any time, with or without cause. Any subsequent violation of the Employer's Drug and Alcohol Policy shall be grounds for immediate discharge. An employee who seeks help voluntarily as contemplated by this paragraph must do so and inform the Company prior to the random selection for or prior to any cause or circumstance giving rise to the requirement for or the administration of a drug and/or alcohol test covered by this Policy.

M. The Employer reserves the right to test job applicants for controlled substances or mood-altering substances at any time, with or without cause, as the Employer determines appropriate.

N. The National Institute of Drug Abuse and Department of Transportation standards shall be used to determine threshold limits for prohibited substances.

For the Employer:

DELUXE ICE CREAM COMPANY

By: _____

Date: _____

For the Union:

**GENERAL TEAMSTERS LOCAL
UNION NO. 324**

By: _____

Date: _____

Deluxe Ice Cream Co./General Teamsters Local 324
Machine Operators, Forklift, Etc. [Aug. 1, 2008 through Jul 31, 2011]
040671, 000001, 502038309.5

EXHIBIT "5"

000164

WAGE RATES PER HOUR

Effective:	<u>8/1/08</u>	<u>8/1/09</u>	<u>8/1/10</u>
Lead Freezer Operator; Mix Man and Vita Line Operator	\$16.81	\$17.36	\$17.88
Sandwich Machine Operator; Cones and Cups Machine Operator	\$16.31	\$16.84	\$17.35
Loaders and Checkers/Forklift	\$16.38	\$16.91	\$17.42
Semi-Drivers	\$16.57	\$17.11	\$17.62
Maintenance	\$16.94	\$17.49	\$18.01
Machine Operator Pool (max. 5)/Freezer Forklift	\$11.41	\$11.78	\$12.13

6.2 **Break-In Rate:** The following are the minimum scales of wages for employees working in the classifications covered by this Agreement, other than machine operator pool/freezer forklift employees:

0-1,560 Straight-Time Hours	70% of Classification Rate
1,561-3,120 Straight-Time Hours	80% of Classification Rate
3,121-4,680 Straight-Time Hours	90% of Classification Rate
Thereafter	Full Classification Rate

6.3 The progression increases provided in the wage schedules shall be placed into effect at the beginning of the first pay period following the employee's completion of the required number of hours to advance to the next wage bracket.

6.4 The above break-in rates may be accelerated at the sole discretion of the Employer.

6.5 The wage rates set forth in this Article are intended only to be the minimum wage rates the Employer is obligated to pay. Nothing contained in this Agreement shall preclude the Employer from paying more than these minimum wage rates at its sole discretion. Institution of an over scale rate does not guarantee its continuity by the Employer unless otherwise specifically agreed to by the parties in writing. In the event an employee is receiving more than the minimum in effect, but less than any newly adjusted minimum, then the employee is only entitled to the difference between the contractual minimum and the employee's over scale amount. However, if the employee is receiving more than the minimum in effect, then the Employer is not required to increase the amount of the employee's over scale minimum.

EXHIBIT "5"

7.8 Distribution of Overtime and Available Weekend Work for the Plant:

A. Regular employees may bid on available work schedules or shifts during the months of February through September. Bids must be submitted within three (3) working days from posting. The senior qualified employee will be awarded the bid. An employee who successfully bids for an available work schedule or shift must continue on that work schedule or shift for at least six (6) months, or until the shift or work schedule is discontinued, whichever comes first. For bidding purposes, schedules and starting times that are not on a fixed regular forty (40) hour per work basis shall be referred to as "utility."

A shift is deemed discontinued when a regular employee is paid less than twenty-four (24) hours in a workweek (Monday through Sunday). A work schedule is deemed discontinued after no work is scheduled, worked, or paid for a period of seven (7) consecutive calendar days. Regular employees may thereafter use their seniority in accordance with Article 13.4.

B. Available weekend work is work on Saturday and Sunday which is not performed by an employee on a bid basis, or through utility assignment. Each Tuesday at 8:00 a.m., the Employer will post a sign up sheet for available weekend work. The sign-up sheet will be removed at 3:00 p.m. each Wednesday. The available weekend work will be assigned to the senior qualified employee. However, employees who indicate that they are available by signing up must be available and on-call for the day or days specified. Employees who have signed up for available weekend work, and who are either not available or do not answer the Employer's telephone call, will be subject to disciplinary action.

C. Except as provided above, overtime and available weekend work shall be distributed by the Employer in order to maintain efficient operation. The Employer has the right to require overtime and weekend work, and employees may not refuse such assignment, unless excused by the Employer.

45.1 The Employer shall pay into the Western Conference Teamster Pension Plan and Trust on account of each member of the bargaining unit. Effective on September 1, 2008, the Employer shall pay to Western Conference Teamster Pension Plan, for all employees covered by this Agreement for the first 2080 compensable hours each calendar year the following stated amounts. The parties intend to participate in the Western Conference of Teamsters Program for Enhanced Early Retirement (PEER) 84. Contributions required to provide the Program for Enhanced Early Retirement shall be paid on the same basis as contributions for the basic plan. The contributions required to provide the Program for Enhanced Early Retirement will not be taken into consideration for benefit accrual purposes under the Plan. The additional contribution for the PEER must at all times be 6.5% of the basic contribution and cannot be decreased or discontinued at any time to PEER.

A. A base rate contribution of One Dollar and Ninety Six Cents (\$1.96) per compensable hour;

B. A PEER contribution of (6.5%) thirteen cents (\$.13) per compensable hour; and

C. Total Contribution Two Dollars and Nine Cents (\$2.09).

15.2 For probationary employees hired on or after June 1, 2004, the Employer will pay an hourly contribution rate of Ten Cents (\$.10) including One Cent (\$.01) for PEER, during the probationary period, but in no case for a period longer than the first ninety (90) calendar days from the date of hire. If and when this period is completed, the full standard contribution rate shall apply. Contributions shall be calculated on the same basis as described in Article 15 of the Labor Agreement.

15.3 The total amount due to the Western Conference of Teamsters Pension Trust for each calendar month shall be remitted in a lump sum not later than ten (10) days after the last business day of such month or such other time as agreed to between the Employer and the Administrator. The Employer agrees to abide by such rules as may be established by the Trustees of said Trust Fund to facilitate the determination of the hours for which contributions are due, the prompt and orderly collection of such amounts, and the accurate reporting and recording of such amounts paid on account of each member of the bargaining unit. Failure to make all payments herein provided for, within the time specified, shall be a breach of this Agreement.